

No. 10571

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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UNION PAVING CO., a corporation, PACIFIC  
INDEMNITY COMPANY, a corporation and  
MARYLAND CASUALTY COMPANY, a  
corporation,

Appellants,

vs.

UNITED STATES OF AMERICA, for use and  
benefit of SOULE STEEL COMPANY, a cor-  
poration,

Appellee.

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Transcript of Record  
In Two Volumes  
VOLUME I  
Pages 1 to 332

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

FILED

NOV - 2 1943



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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amendment to the Answer to Cross-Complaint	45
Answer and Cross-Claim .....	19
Answer to Cross-Claim .....	41
Appeal:	
Certificate of Clerk to Transcript of Record on .....	74
Designation of Additional Parts of Record on (CCA) .....	540
Designation of Record on (DC) .....	73
Notice of .....	72
Statement of Points to be Relied Upon and Designation of Record on (CCA) .....	530
Stipulation Designating Parts of Record to be Printed on (CCA) .....	527
Association of Attorneys (Plaintiff) .....	18
Certificate of Clerk to Transcript of Record on Appeal .....	74

Index	Page
Complaint .....	2
Exhibit A—Payment Bond .....	9
Exhibit B—Memo of Agreement, Union Paving Co. and Soule Steel Co., Jan 6, 1940 .....	13
Conclusions of Law .....	61
Cross-Claim .....	22
Exhibit C—Miscellaneous Charges Against Soule Steel Co.—Moving and Repairs to Boom .....	38
Exhibit D—Additional Miscellaneous Charges .....	40
Designation of Additional Parts of Record, Ap- pellee's (CCA) .....	540
Designation of Record on Appeal, Appellant's (CCA) .....	530
Designation of Record on Appeal (DC).....	73
Findings of Fact and Conclusions of Law.....	47
Judgment .....	65
Memorandum of Costs and Disbursements, Plaintiff's .....	68
Minute Orders:	
April 19, 1943—Re Motion to Strike Cer- tain Testimony of Defendant.....	47
May 10, 1943—Re Judgment .....	64
Motion for New Trial .....	70

Index	Page
Names and Addresses of Attorneys of Record	1
Notice of Appeal .....	72
Notice of Association of Attorney (Defendants) .....	69
Notice of Motion to Fix Costs, etc.....	67
Order Denying Motion for New Trial .....	72
Order Re Judgment .....	64
Order Re Motion to Strike Certain Testimony of Defendant .....	47
Statement of Points to be Relied Upon by Appellants and Designation of Record on Appeal (CCA) .....	530
Stipulation Designating Parts of Record to be Printed (CCA) .....	527
Transcript of Testimony .....	76
Exhibits for Defendants:	
C—Letter, Jan. 8, 1940, Soule Steel Co. from Union Paving Co. (Identification) .....	130
D—Letter, Jan. 8, 1940, Soule Steel Co. to Union Paving Co. ....	131
E—Letter, Jan. 12, 1940, Soule Steel Co. to Ralph W. Lowry .....	132
F—Letter, Jan. 16, 1940, Soule Steel Co. to A. J. Guy, Bureau of Reclamation, Redding, Calif. ....	133

## Index

## Page

## Exhibits for Defendants—(Continued):

H—Letter, Nov. 8, 1940, Union Paving Co. to Soule Steel Co. (Identification) .....	139
K—Copy of Summary Furnished Soule Steel Co. (Identification)..	205
X—Letter, Sept. 10, 1941, Union Paving Co. to Mr. Wrigley, and Tabulation attached .....	284
Y—Statement of Charges up to January 11, 1941, Union Paving Co. to Soule Steel Co. ....	406
II—Letter, Jan. 18, 1941, Soule Steel Co. to Union Paving Co. ....	346
OO—Letter, Feb. 25, 1941, Soule Steel Co. to Union Paving Co. ....	351
WW—Letter, Sept. 10, 1941, Mr. Wrigley to Thelen & Marrin with enclosures .....	361

## Exhibits for Plaintiff:

1—Estimate No. 1, Progress Billing 3/27/40 .....	80
2—Estimate No. 2, Progress Billing 4/30/40 .....	81
3—Estimate No. 3, 5/31/40.....	82
4—Estimate No. 4, 7/1/40 .....	83

**Index**

**Page**

**Exhibits for Plaintiff—(Continued):**

5—Estimate No. 5, 7/29/40.....	84
6—Estimate No. 6, 8/30/40.....	84
7—Estimate No. 7, 9/30/40.....	85
8—Estimate No. 8, 10/31/40.....	86
Estimate No. 9, 11/29/40.....	86
Estimate No. 10, 12/31/40.....	87
Estimate No. 11, 1/31/41.....	87
Estimate No. 12, 2/28/41.....	87
Estimate No. 13, 3/31/41.....	87
Estimate No. 14, 4/30/41.....	88
Estimate No. 15, 5/31/41.....	88
Estimate No. 16, 6/26/41.....	88
9—Revised Final Estimate No. 16, 7/16/41 .....	88
10—Letter, 7/9/41, Union Paving Co. to Soule Steel Co.....	90
11—Letter, 7/14/41, United States Dept. of Interior, Bureau of Rec- lamation, S. O. Harper, Ch. Engr., to Soule Steel Co. ....	92
12—Letter, 7/17/41, Soule Steel Co. to Union Paving Co. and attached bill .....	93
13—Letter, 5/15/42, "To Whom it May Concern", signed by Assis- tant Comptroller of the U.S. ....	98

	Index	Page
Exhibits for Plaintiff—(Continued):		
14—Demand on Pacific Indemnity Co. for Payment of \$77,352.62, dated 7/17/41 .....		106
16—Chart of Accounts, Pit River Project .....		216
18—Letter, 10/12/40, A. W. Lawton to L. W. Hunt .....		260
21—Letter, 12/11/39, Soule Steel Co. to Union Paving Co. ....		324
23—Letter, 12/11/39, Soule Steel Co. containing Interlineations .....		388

### Witnesses for Defendants:

#### Dowling, J. A.

—direct .....	275
—recalled, direct .....	292
—cross .....	300
—redirect .....	329
—surrebuttal, direct .....	509
—cross .....	514

#### Hunt, Loren

—direct .....	154
—recalled, direct .....	177
—cross .....	207
—recalled, cross .....	241
—redirect .....	267
—recross .....	274
—surrebuttal, direct .....	500
—cross .....	506

Index

Page

Witnesses for Defendants—(Continued):

Morisette, L. H.

—direct .....	442
—cross .....	448
—redirect .....	456

Soule, Edward L.

—direct .....	333, 349
—cross .....	370
—redirect .....	391
—recalled, redirect .....	405
—recross .....	416

Stevens, Lester Earl

—direct .....	416
—cross .....	434
—redirect .....	438
—recalled, redirect .....	457

Witnesses for Plaintiff:

Cochrane, Alexander

—rebuttal, direct .....	476
—cross .....	484
—redirect .....	498

Mahon, Ross L.

—direct .....	226
—cross .....	231

Soule, Edward L.

—direct .....	77
—cross .....	105, 127

Stevens, Lester Earl

—rebuttal, direct .....	462
—cross .....	470





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Attorneys for Plaintiff-Cross-Defendant  
and Appellee.

In the District Court of the United States in and  
for the Northern District of California, South-  
ern Division

No. 22308-R

UNITED STATES OF AMERICA, for Use and  
Benefit of SOULE STEEL COMPANY, a  
corporation,

Plaintiff,

vs.

UNION PAVING CO., a corporation, PACIFIC  
INDEMNITY COMPANY, a corporation, and  
MARYLAND CASUALTY COMPANY, a  
corporation,

Defendants.

### COMPLAINT

(By Subcontractor against Principal  
and Sureties on Payment Bond) [1\*]

Plaintiff complains of defendants and for cause  
of action alleges:

#### I

That Soule Steel Company, the party for whose  
use and benefit this action is brought, is, and at all  
times herein mentioned has been, a corporation  
duly organized and existing under and by virtue of  
the laws of the State of California and having its  
principal office and place of business in the City  
and County of San Francisco, State of California.

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\*Page numbering appearing at foot of page of original certified  
Transcript of Record.

## II

That Union Paving Co. is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of Nevada and engaged, and authorized to engage, in business in the State of California and having its principal office and place of business within the State of California, in the City and County of San Francisco.

## III

That Pacific Indemnity Company is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California and doing, and authorized to do, a surety business in the State of California.

## IV

That Maryland Casualty Company is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, and doing, and authorized to do, a surety business in the State of California, and having its principal office and place of business within the State of California, in the City and County of San Francisco. [2]

## V

That heretofore, to-wit, on or about November 4, 1939, defendant Union Paving Co. made and entered into a contract in writing with The United States of America, acting by and through the Bu-

reau of Relocation, Department of the Interior, for the construction by said Union Paving Co. of public work of the United States, namely, abutments and piers, Pit River Bridge Relocation of Southern Pacific Railroad and U. S. Highway 99, Kennett Division, Central Valley Project, California; that the contract price to be paid for said work under said contract was the sum of \$1,138,-288.00; and that said contract was to be performed and executed in the Northern District of California.

## VI

That before said contract was awarded to said Union Paving Co., said corporation furnished to the United States a payment bond, dated November 4, 1939, in which said Union Paving Co., as principal, and said Pacific Indemnity Company and said Maryland Casualty Company, as sureties, are held and firmly bound unto the United States of America in the penal sum of \$455,315.20, for the payment of which sum well and truly to be made, said principal and said sureties bound themselves, their heirs, executors, administrators and successors as in said bond specified; that the condition of said bond was that, whereas said Union Paving Co. entered into said contract of November 4, 1939, with The United States of America, now, therefore, if said Union Paving Co. should promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly

authorized modifications of said contract which might thereafter be made, notice of which modifications to the sureties was expressly waived, then the obligation of the bond should be void but otherwise to remain in full force [3] and virtue; that said bond was intended to protect and did protect said Soule Steel Company, which corporation, as hereinafter specified, supplied labor and material as subcontractor in the prosecution of the work provided for in said contract of November 4, 1939: that a full, true and correct copy of said payment bond is annexed hereto, marked Exhibit "A", and is hereby referred to and incorporated herein the same as if fully set forth herein; and that said contract of November 4, 1939 was attached to said bond.

## VII

That subsequent to the execution of said contract and payment bond, and on or about January 6, 1940, plaintiff entered into a subcontract in writing with defendant Union Paving Co., wherein and whereby plaintiff agreed to furnish and supply certain labor, materials, tools and equipment and to perform certain services, as in said subcontract provided, being a portion of the labor, materials, tools, equipment and services which said Union Paving Co. had, in said contract of November 4, 1939, agreed to furnish and supply to the United States of America; that plaintiff agreed to furnish and supply said labor, materials, tools, equipment and services on the terms and conditions and for the compensation set forth in said subcontract of

January 6, 1940, between plaintiff and defendant, Union Paving Co.; and that a full, true and correct copy of said written subcontract is annexed hereto, marked Exhibit "B", and is hereby referred to and incorporated herein the same as if fully set forth herein.

### VIII

That between January 6, 1940 and May 31, 1941, plaintiff, acting under and in accordance with the terms and provisions of said subcontract of January 6, 1940, furnished and supplied all of said labor, materials, tools and equipment and performed all of said services to and for said Union Paving Co., all of which were necessary for and were actually used in the prosecution of the work [4] provided for in said contract of November 4, 1939, and that Union Paving Co. contracted and agreed to pay to plaintiff for the same the sum of \$124,393.13; that, at the special instance and request of said Union Paving Co. plaintiff sold and delivered certain additional goods, wares and merchandise and performed certain additional services to and for said Union Paving Co., all of which were necessary for and were actually used in the prosecution of the work provided for in said contract of November 4, 1939, having the reasonable value of \$671.84 and that said Union Paving Co. promised and agreed to pay said sum to plaintiff for the same; that on May 31, 1941, plaintiff furnished the last of said labor, materials, tools and equip-



ment and performed the last of said services hereinbefore in this paragraph referred to; and that plaintiff has fully performed all the terms and conditions of said subcontract by it to be performed.

## IX

That on account of the matters hereinbefore in this complaint alleged said defendants, and each of them, became indebted to plaintiff in the sum of \$125,064.97; that on or before July 18, 1941 there had been paid or credited on account of said indebtedness the sum of \$47,712.35 and no more; and that on said July 18, 1941 there was due, owing and unpaid from said defendants, and each of them, to plaintiff on account of the matters hereinbefore alleged, the sum of \$77,352.62.

## X

That, on or about July 18, 1941, plaintiff demanded from defendants, and each of them, the payment of said sum of \$77,352.62, together with interest thereon at the rate of seven per cent (7%) per annum from said July 18, 1941 to date of payment, but that defendants, and each of them, have failed and refused to pay the same or any part thereof, with the exception of the sum of [5] \$16,000.00 which was paid by Union Paving Co. on December 31, 1941, and that from and after January 1, 1942, there was due, owing and unpaid from said defendants, and each of them, and there is now due, owing and unpaid from said defendants, and each of them, to plaintiff on account of the

matters hereinbefore alleged the sum of \$61,352.62, together with interest on said sum of \$77,352.62 from July 18, 1941 to and including December 31, 1941, at the rate of 7% per annum, and interest on said sum of \$61,352.62 at the rate of 7% per annum from January 1, 1942.

Wherefore, plaintiff prays judgment against said defendants, and each of them, for the sum of \$61,352.62, together with interest on the sum of \$77,352.62 from July 18, 1941 to and including December 31, 1941, at the rate of 7% per annum, and interest on the sum of \$61,352.62 at the rate of 7% per annum from January 1, 1942; for its costs of suit incurred herein; and for such other and further relief as to the Court may seem meet and proper in the premises.

Dated: September 17, 1942.

MAX THELEN

THELEN & MARRIN

Attorneys for Soule Steel  
Company,

111 Sutter Street,

San Francisco, California. [6]

State of California,

City and County of San Francisco—ss.

D. J. Stoddard, being first duly sworn, deposes and says:

That Soule Steel Company, for whose use and benefit the above action is brought, is a corporation; that affiant is an officer of said corporation.



to-wit, the Secretary thereof, and that as such officer he makes this verification for and on behalf of said corporation; that affiant has read said complaint and knows the contents thereof and that the same is true of his own knowledge except as to matters which are therein stated on information and belief, and as to those matters, that he believes it to be true.

D. J. STODDARD

Subscribed and sworn to before me this 17th day of September, 1942.

[Seal] LULU P. LOVELAND

Notary Public in and for the City and County of San Francisco, State of California. [7]

EXHIBIT "A"

U. S. Standard Form No. 25-A

Approved by the Secretary of the Treasury  
Sept. 16, 1935

PAYMENT BOND

(Construction)

Pursuant to the Act of Congress, Approved  
August 24, 1935  
49 Stat. 1011

Know all men by these presents, That we, Union Paving Co., a corporation organized and existing under the laws of the State of Nevada, as Principal, and Pacific Indemnity Company, a California corporation, and Maryland Casualty Company, a

Maryland Corporation, as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of four hundred fifty-five thousand three hundred fifteen and 20/100 (\$455,315.20) dollars for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, firmly by these presents, as follows:

(See Rider Attached)

The Condition of this Obligation is such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated November 4, 1939, for construction of abutments and piers, Pit River Bridge, relocation of Southern Pacific Railroad and U. S. Highway 99, under the schedule of Specifications No. 877, Kennett Division, Central Valley project, California.

Now, Therefore, If the principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

In Witness Whereof, the above-bounden parties have executed this instrument under their several seals this 4th day of November, 1939, the name and corporate seal of each corporate party being hereto

affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

UNION PAVING CO.

(Corporate principal)

310 California Street, San  
Francisco, Calif.

(Business address)

(Affix Corporate Seal)

By A. LAWTON (Seal)

Title: President

Attest:

R. HILDEBRAND [8]

This Rider is attached to and forms a part of the bond executed on behalf of Union Paving Co. in the amount of four hundred fifty-five thousand three hundred fifteen and 20/100 (\$455,315.20) dollars, for construction of abutments and piers, Pit River Bridge, relocation of Southern Pacific Railroad and U. S. Highway 99, under the schedule of Specifications No. 877, Kennett Division, Central Valley project, California, contract dated November 4, 1939.

The Principal and the Pacific Indemnity Company, as Surety, jointly and severally in the sum of three hundred sixty-four thousand two hundred fifty-two and 16/100 (\$364,252.16) dollars and no more;

The Principal and the Maryland Casualty Company, as Surety, jointly and severally in the sum of

ninety-one thousand sixty-three and 04/100 (\$91,-063.04) dollars and no more.

PACIFIC INDEMNITY COM-  
PANY

100 Sansome Street, San  
Francisco

By W. F. AMES, JR., (Seal)  
Attorney in fact

Attest:

N. E. HANSSEN

MARYLAND CASUALTY  
COMPANY

210 Sansome Street, San  
Francisco

By W. G. KELSO, (Seal)  
Attorney in fact

Attest:

MARIE K. PHILIPPS

U. S. Standard Form No. 25-A—(Approved  
Sept. 16, 1935)

Sheet 2

CERTIFICATE AS TO CORPORATE  
PRINCIPAL

I, R. Hildebrand, certify that I am the secretary of the corporation named as principal in the within bond; that A. Lawton, who signed the said bond on behalf of the principal, was then President of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond

was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

R. HILDEBRAND (Seal)

(Corporate Seal) [9]

## EXHIBIT "B"

### MEMO OF AGREEMENT

Memo of Agreement by and between Union Paving Co., a Nevada corporation, hereinafter called the Contractor, and Soule Steel Company, a California corporation, hereinafter called the Subcontractor.

Witnesseth:

Whereas, on or about the 4th day of November, 1939 said contractor duly entered into a contract with The United States of America by the Bureau of Reclamation, for the construction of piers and abutments for the relocation of the Southern Pacific Railway and U. S. Highway 99 over the Pit River, Kennett Division, Central Valley Project, California, and

Whereas, said contractor is desirous of subletting a portion of said work to said subcontractor and said subcontractor has agreed to do and perform certain portions of said work and to be bound by the terms and conditions of the plans, specifications and contract for said work in all respects, as if said subcontractor were a party to said con-

tract in lieu of said contractor, except as otherwise herein provided.

Now, therefore, said contractor and said subcontractor for the consideration hereinafter named agree as follows:

23—Materials furnished by the Government:

The subcontractor at its own cost agrees to provide all labor, materials, tools and equipment or other means and promptly unload all reinforcement bars from cars delivered at Redding, California check and haul the same to the job site and provide suitable warehouse or other means of protection for any material requiring storage or protection, in accordance with the provisions of paragraph 23 of said specifications applicable to the unloading, handling and placement of reinforcing bars.

24—Materials to be furnished by the subcontractor:

The subcontractor at its own cost agrees to provide all labor, wire, wire ties, rods or other materials and appliances used for securing reinforcement bars, metal or other temporary supports, if used, to hold reinforcement bars during the placing of concrete, including backing-up strip required for welding, in accordance with the provisions of paragraph 24 of said specifications.

45—Welding reinforcing bars:

The subcontractor at its own cost agrees to provide all labor, materials and equipment and cut the ends of the bars for welding and provide all clamps, tie rods, cables, blocking, anchors, and other acces-



sories that may be required, including the placement of backing-up strips and shall firmly and securely hold the reinforcing bars in position while the joints are being welded in accordance with the provisions of paragraph 45 of said speci- [10]fications, excepting therefrom only the labor, materials and equipment necessary for the welding of the joints for which work other contractors will be employed.

66—Reinforcement bars:

The subcontractor at its own cost agrees to provide all labor, materials, tools, accessories and equipment and perform and observe all the provisions contained in paragraph 66 of said specifications.

Time is of the essence of this agreement and the subcontractor agrees that it will proceed with the placing of reinforcement bars in sections of the piers and abutments made ready for such placement immediately after being notified by the contractor of the readiness of each section and prosecute the same diligently to completion, unless prevented by strikes, lockouts or other contingencies beyond its control.

The subcontractor agrees that the contractor shall have the right to use its rigs and equipment upon the job for the purpose of lifting and hoisting materials, equipment and forms at all times, when the same is not in use by the subcontractor, free from any charge, except that said contractor agrees to assume all risk or loss to said equipment, from said contractor's use thereof, and shall save the

subcontractor harmless from any damage, claim on loss arising from said use.

The contractor at its own cost agrees to provide an accessible roadway from Highway 99 to the base of all piers and abutments; construct a wooden trestle over and about the base of all pier excavations and construct wooden cores as shown on the plans which may be used by the subcontractor as a supplementary support for reinforcement bars; said subcontractor assuming the risk of any damage to said trestles or cores arising directly or indirectly from the use thereof and shall save and hold harmless said contractor from any damages, claims or losses.

The contractor at its own cost agrees to provide sufficient electric current at or near the base of each pier and install electric energy for the operation of the subcontractor's equipment.

The contractor at its own cost agrees to provide and pour necessary concrete sills in the base of all piers sufficient to support reinforcing steel mats.

The contractor agrees to pay said subcontractor for placing reinforcement bars at the rate of \$22.50 per ton for reinforcement bars actually placed in accordance with the plans and specifications which shall be considered as full compensation for unloading, warehousing, hauling, bending and placing reinforcement bars and clamps, and doing all work necessary or incidental thereto and for furnishing all tie wire, clamps and supporting devices.

The contractor shall not be answerable or accountable for any loss or damage that may happen to the



work of said subcontractor or any part thereof; or for any of the materials or other things used or employed in performing said work by the subcontractor; or for injury to any person, either workman or the public; for damage to property from any cause which might have been prevented by the subcontractor or his workmen; against all of which [11] injuries and damage to persons and property with said subcontractor having control over such work must properly guard.

Said subcontractor shall indemnify and save harmless said contractor from all suits or actions of every nature, brought for or on account of any injury or damage received or sustained by any person or persons, by or from said subcontractor, his servants or agents, in the construction of said subcontractor's work or by or in consequence of any negligence in guarding the same; improper materials used in construction or by or on account of any act or omission of said subcontractor or its agents.

Neither this agreement nor the work to be performed hereunder is assignable.

Payments are to be made to subcontractor on or about the 10th of the following month for 85% of the value of the work performed during the preceding month, and the remaining 15% to be paid thirty days after completion of said subcontractor's portion of the work.

In witness whereof, the parties hereto have exe-

cuted this agreement on this 6th day of January, 1940.

UNION PAVING CO

By J. A. DOWLING

SOULE STEEL COMPANY

By EDW. L. SOULE

[Endorsed]: Filed Sept. 17, 1942. [12]

---

[Title of District Court and Cause.]

ASSOCIATION OF ATTORNEYS

We, Max Thelen, and Thelen & Marrin, attorneys for the plaintiff in the above entitled action, hereby associate with us as attorney of record for the plaintiff, Courtney L. Moore.

Dated: October 9, 1942

MAX THELEN

THELEN & MARRIN [13]

I, Courtney L. Moore, hereby accept the foregoing association and agree to act as one of the attorneys of record for the plaintiff.

Dated: October 9, 1942.

COURTNEY L. MOORE

The Soule Steel Company, for whose use and benefit the above action is brought, hereby consented to the foregoing association.

Dated: October 9, 1942.

SOULE STEEL COMPANY

By D. J. STODDARD

Secretary

[Endorsed]: Filed Oct. 13, 1942. [14]

[Title of District Court and Cause.]

## ANSWER AND CROSS-CLAIM

### ANSWER

Now come defendants Union Paving Co., a corporation, Pacific Indemnity Company, a corporation, and Maryland Casualty Company, a corporation, and, for answer to the complaint of plaintiff herein, admit, deny and allege as follows, to-wit:

#### I.

These defendants specifically admit allegations "I", "II", "III", "IV", "V", "VI", and "VII" of plaintiff's complaint herein. [15]

#### II.

These defendants admit that between January 6, 1940, and some day in June, 1941, plaintiff, acting under and in accordance with the terms and provisions of said subcontract of January 6, 1940, furnished and supplied certain of said labor, materials, tools and equipment, and performed certain of said services to and for said Union Paving Co., all of which were necessary for and were actually used in the prosecution of the work provided for in said contract of November 4, 1939, that Union Paving Co. agreed to pay to plaintiff for the same the sum of \$63,280.51, that at the special instance and request of said Union Paving Co. plaintiff sold and delivered certain additional goods, wares and merchandise and performed certain additional

services to and for said Union Paving Co., all of which were necessary for, and were actually used in, the prosecution of the work provided for in said contract of November 4, 1939, of the reasonable value of \$671.84, and that on or about some day in June, 1941, or thereabouts, plaintiff furnished the last of said labor, materials, tools and equipment and performed the last of certain services hereinbefore in this paragraph referred to; and except as thus admitted, these defendants deny, generally and specifically, the facts, matters and things in said allegation "VIII" set forth.

### III.

Defendants admit that on account of the matters hereinbefore in this complaint alleged, defendant Union Paving Co. became indebted to plaintiff in the sum of \$63,952.35, that on or before July 18, 1941, there had been paid or credited on account of said indebtedness, the sum of \$47712.35, and that on said July 18, 1941, there was unpaid from defendant Union Paving Co. to plaintiff on account of the matters hereinbefore admitted the sum of \$16,240.00; and, except as thus admitted, defendants [16] deny generally and specifically, the facts, matters and things in allegation "IX" of plaintiff's complaint set forth.

### IV.

Defendants admit that on or about July 18, 1941, plaintiff demanded from defendant Union Paving Co. the payment of the sum of \$77,352.62 and in-

terest, and defendants admit and allege that on or about December 31, 1941, defendant Union Paving Co. paid to plaintiff the sum of \$16,000.00; and, except as thus admitted and alleged, defendants deny generally and specifically the facts, matters and things in allegation "X" of plaintiff's complaint set forth. In this connection, defendants allege that on December 31, 1941, there was due, owing and unpaid from plaintiff to defendant Union Paving Co., on account of interest, a sum in excess of the \$240.00 apparent balance against defendant Union Paving Co. and in favor of plaintiff.

Wherefore, defendants pray that plaintiff take nothing by its complaint herein, but that the same be dismissed, and that defendants have judgment for their costs of suit and for such other and further relief as to the Court may seem meet and proper in the premises.

HENRY F. WRIGLEY

Attorney for Defendants. [17]

In the District Court of the United States in and  
for the Northern District of California South-  
ern Division.

No. 22308R

UNION PAVING CO., a corporation,  
Cross-plaintiff,  
vs.

SOULE STEEL COMPANY, a corporation,  
Cross-defendant.

### CROSS-CLAIM

For further answer to the complaint herein, and  
by way of cross-claim, defendant and cross-plain-  
tiff, Union Paving Co., a corporation, complains of  
plaintiff and cross-defendant, Soule Steel Company,  
a corporation, and for cause thereof, alleges:

#### I.

That Union Paving Co. is, and at all times herein  
mentioned has been, a corporation duly organized  
and existing under and by virtue of the laws of the  
State of Nevada, and engaged, and authorized to  
engage, in business in the State of California, and  
having its principal office and place of business  
within the State of California, in the City and  
County of San Francisco. [18]

#### II.

That Soule Steel Company is, and at all times  
herein mentioned has been, a corporation duly or-  
ganized and existing under and by virtue of the



laws of the State of California, and having its principal office and place of business in the City and County of San Francisco, State of California.

### III.

That heretofore, to-wit, on or about November 4, 1939, defendant and cross-plaintiff, Union Paving Co., made and entered into a contract in writing with The United States of America, acting by and through the Bureau of Reclamation, Department of the Interior, for the construction by said Union Paving Co. of public work of the United States, namely, abutments and piers, Pit River Bridge Relocation of Southern Pacific Railroad and U. S. Highway 99, Kennett Division, Central Valley Project, California; that the contract price to be paid for said work under said contract was the sum of \$1,138,288.00, or thereabouts; and that said contract was to be performed and executed in the Northern District of California; and that in and by the specifications, which were made a part of said written contract, it was provided and agreed as follows:

“23. Materials furnished by the Government.—The Government will furnish cement, sand, and broken rock or gravel for use in concrete; admixtures, if required, for use in concrete; cement and sand for use in mortar; clear curing compound for curing concrete, in accordance with the provisions of paragraph 64; reinforcement bars; rubber water stops, molded bituminous material, copper nails, and coating material for joints; metalwork for expansion joints; waterproofing paint; sewer pipe and

split sewer pipe for drains; metal drain inlets; metal pipe and fittings for drains; hardware cloth; corrugated-metal-pipe for anchor-bolt wells; metal forms for recesses for pipe-handrail post; metal drain troughs for drains at expansion joints in roadways on abutments 1 and 4; name plates and frames; metal ladders; steel covers for temporary manholes in piers 3 and 4; timber and anchor bolts for paving-notch buffers; electrical metal conduits, conduit boxes, fittings, and accessories; steel pipe for electrical cables; stress meters, cables, and terminal outlets; tubing and fittings for embedded cooling systems and cooling concrete; paint and coating materials; and also all other materials not specifically mentioned in this paragraph or in paragraph 24 that will become a part of the completed construction [19] work. Sand and broken rock or gravel will be delivered in the contractor's trucks at the gravel plant near Redding, California, as shown on the location map. All other material furnished by the Government will be delivered to the contractor f. o. b. cars at Redding, California. The contractor shall haul all of the materials from the points of delivery to the work; shall provide suitable warehouses or other means of protection satisfactory to the contracting officer for such of the materials as, in the opinion of the contracting officer, require storage or protection; and will be charged for any material lost or damaged after delivery, except as otherwise specifically provided, the same amounts that the materials cost the Government at the point of delivery to the contractor. The contractor shall be responsible for



the prompt unloading of the materials delivered on cars and for proper care of the materials and will be held liable for any demurrage charges incurred due to failure to unload cars promptly. The contractor shall report to the contracting officer, in writing, within 24 hours after unloading, any shortage in or damage to materials when delivered. The cost of unloading, hauling, storing and caring for all of the materials furnished by the Government shall be included in the prices bid in the schedule for the work in which the materials are to be used. The cost of handling and installing minor miscellaneous items of timber, metal and other work, for which specific prices are not provided in the schedule shall be included in the prices bid for the work to which they are appurtenant. The contractor shall return to the Government at Redding, California, or at points convenient to the work, as directed by the contracting officer, all unused materials and will be charged for any materials not used and not returned the same amounts that the materials cost the Government at the point of delivery to the contractor”

“24. Materials to be furnished by the contractor—The contractor will be required to furnish all form materials, including oil for oiling forms; all wire, wire ties; or other appliances used for holding forms and for securing reinforcement bars; metal or other temporary supports, if used, for reinforcement bars and other metalwork; welding rods for welding reinforcement bars; all backfill materials; all gravel and broken rock or boulders for dry-rock paving; gravel or broken rock for drain pockets; all water used for

mixing, cleaning, curing, and cooling concrete and mortar and for moistening backfill materials to be compacted; and also all other materials not a part of the completed construction work required for the completion of the contract. The contractor will be required to haul all of these materials as well as all of the materials delivered to the contractor by the Government. The cost of hauling all of the materials described above and of furnishing all of the materials required to be furnished by the contractor shall be included in the unit prices bid in the schedule for the work for which the materials and hauling are required."

"45. Welding reinforcement bars.—The 2-inch square bars for vertical reinforcement in the piers shall be welded together so as to provide continuous reinforcement without overlapping of the bars. The contractor shall properly cut the ends of the bars for welding and shall weld all bars, as shown on the drawings or as directed by the contracting officer. The Contractor shall provide all clamps, tie rods, cables, blocking, anchors, and other accessories that may be required for holding the reinforcement bars in position while the joints are being welded and shall furnish all welding electrodes and backing-up strips required for welding the reinforcement bars. The ends of the bars to be joined by welding shall be gas-cut, sawed, or sheared to the templates [20] shown on the drawings. Where the bars are sheared or gas-cut, the cut surfaces shall be machined or chipped to a depth of not less than one-sixteenth of an inch. Particular care shall be taken in aligning

and separating the ends of the bars to be joined by welding, and the ends of the bars shall be matched accurately and shall be retained in the position shown on the drawings during the welding operations. Suitable means shall be provided for holding the bars securely in position during the welding process. If clamps are used at the sections to be welded, means shall be provided for preventing welding of the clamps to the 2-inch bars. If the backing-up strips are used under the clamps at the ends of the welding grooves, each strip shall be a mild-steel bar not more than three-sixteenths of an inch thick. After the welding is completed, the backing-up strips may remain permanently welded to the bars or may be removed by chipping or other means: Provided, That any part of each backing-up strip that extends more than one-half of an inch beyond the surface of the 2-inch bar to which it is welded or beyond the zone of welding shall be removed. The ends of the bars shall be heated with a blow torch or other suitable means to a temperature of approximately 500°F. immediately before welding is commenced and shall be maintained at such temperature during the welding operations. Surfaces to be welded shall be clean and free from scale, rust, and foreign matter. All welding shall be performed by the electric-arc method, and the process and equipment used, the rate of depositing the weld metal, and the rate of voltage and current shall be subject to the approval of the contracting officer. Welding electrodes shall be of the heavily coated type and shall be specially designed for all-position welding. The coating shall be

of uniform thickness and shall be of such composition as, when decomposed during welding, will effectively shield the arc so as to exclude the atmosphere from the molten metal. Weld metal shall be deposited in successive layers, and each layer shall be cleaned of all slag and shall be peened before the next layer is applied. All welds shall have complete penetration and freedom from imperfection, and visual inspection of the edges of the welds shall indicate good fusion with the base metal. All welds shall be acceptable to the contracting officer. Defective welds shall be chipped to sound metal and the resulting cavity shall be filled in the same manner as the original grooves were filled or the bars shall be gas-cut and rewelded. The contractor shall be responsible for the quality of the work performed by his welding organization and shall employ as welders on the work of welding the reinforcement bars only skilled operators who have passed the tests hereinafter described. Before being permitted to weld reinforcement bars on the job, the operator shall weld two test bars of the 2-inch square reinforcement bars to be used on the work. The ends of the test bars shall be prepared in the manner prescribed for the ends of the bars to be welded in the work and shall be welded with the bars in the same position and using the same welding technique and the same kind of electrodes. The breaking strength and the yield point of the welded bars shall be not less than 80 percent of the specified minimum tensile strength and yield point of the metal in the bars. In order for a welder to be certified for the work, both test bars



must meet the strength requirements: Provided, That, if only one of the bars meets the requirements, the welder may be permitted to weld two additional test bars, and if these two bars meet the requirements, he will be certified. In addition to the above requirement, each welder will be required to make at least one full size test weld, as described above, for each 100 joints welded by him. The Government will provide reinforcement bars for the tests and will make the strength tests of the welded bars, but the contractor shall furnish all other labor and [21] materials required for making the test welds. No separate payment will be made for making the qualification tests, and except for the cost of the reinforcement bars furnished by the Government, the entire cost of making the qualification tests shall be included in the unit price bid in the schedule for welding reinforcement bars. The contracting officer shall have the right, at any time, to call for and witness the making of test welds by any welder, and to witness the *physcial* tests, which tests shall meet the requirements of this paragraph. Payment for welding reinforcement bars as described in this paragraph will be made at the unit price per weld bid therefor in the schedule."

"66. Reinforcement bars.—Steel reinforcement bars shall be placed in the concrete wherever shown on the drawings or where directed by the contracting officer. The reinforcement bars will be furnished to the contractor by the Government as provided in paragraph 23. Unless otherwise shown on the drawings or directed by the contracting officer, measure-

ments made in placing the bars shall be to the center lines of the bars. If more than one grade of reinforcement bar is furnished, the contractor shall use proper precautions, satisfactory to the contracting officer, to prevent the use of the wrong grade of reinforcement bar in any part of the work. The exact position, size, and shape of reinforcement bars are not shown in all cases on the drawings, and where not shown they shall be in all respects as specified by the contracting officer, and where necessary, as determined by the contracting officer, the contractor will be furnished supplemental detail drawings or lists which will give the information necessary for cutting, bending, and placing the reinforcement bars. Before the reinforcement bars are placed, the surfaces of the bars and the surfaces of any metal supports for reinforcement bars shall be cleaned of objectionable rust, scale, dirt, grease, or other foreign substances, and, after being placed, the reinforcement bars shall be maintained in a clean condition until they are completely embedded in the concrete. The Government will make every reasonable effort to have the reinforcement bars delivered to the contractor in good condition, but this shall not relieve the contractor from full responsibility for the condition of the bars immediately prior to covering them with concrete. Reinforcement bars shall be accurately placed and secured in position so that they will not be displaced during the placing of the concrete, and special care shall be exercised to prevent any disturbance of the reinforcement bars in con-

crete that has already been placed. Metal chairs, metal hangers, metal spacers, or other metal supports satisfactory to the contracting officer may be furnished and used by the contractor for supporting reinforcement bars. Wherever necessary, in the opinion of the contracting officer, to prevent future damage to the concrete or unsightly rust stains on exposed concrete surfaces, all such supports for reinforcement bars shall be made of noncorrodible metal. Payment for placing reinforcement bars will be made at the unit price per pound bid therefor in the schedule, which unit price shall include the cost of furnishing and attaching wire ties and metal supports if used, of unloading, hauling, sorting, storing, cutting, bending, cleaning, placing, and securing and maintaining in position all reinforcement bars, as shown on the drawings or as directed by the contracting officer."

#### IV.

That before said contract was awarded to said Union [22] Paving Co., said corporation furnished to the United States labor and material and payment bonds, dated November 4, 1939, in which said Union Paving Co., as principal, and said Pacific Indemnity Company and said Maryland Casualty Company, as sureties were held and firmly bound unto the United States of America in the penal sum of \$455,315.20, for the payment of which sum well and truly to be made, said principal and said sureties bound themselves, their heirs, executors, administrators and successors as in said bond specified, and said bonds were conditioned as in said contract of November 4, 1939,



and the law in such cases made and provided; and that said contract of November 4, 1939, was attached to said bonds.

#### V.

That subsequent to the execution of said contract and bonds, and on or about January 6, 1940, plaintiff and cross-defendant entered into a subcontract in writing with defendant and cross-plaintiff, Union Paving Co., wherein and whereby plaintiff and cross-defendant agreed to furnish and supply certain labor, materials, tools and equipment and to perform certain services as in said subcontract provided, being a portion of the labor, materials, tools, equipment and services which said Union Paving Co. had, in said contract of November 4, 1939, agreed to furnish and supply to the United States of America; that plaintiff and cross-defendant agreed to furnish and supply said labor, materials, tools, equipment and services on the terms and conditions and for the compensation set forth in said subcontract of January 6, 1940, between plaintiff and cross-defendant and defendant and cross-plaintiff, Union Paving Co.; and that a full true and correct copy of said written subcontract is annexed to plaintiff's complaint marked Exhibit "B", and is hereby referred to and incorporated herein the same as if fully set forth herein. [23]

#### VI.

That in and by the terms and provisions of said subcontract Exhibit "B" Cross-defendant, Soule Steel Company, as subcontractor, covenanted and agreed as follows:

“23—Materials Furnished by the Government:

“The subcontractor at its own cost agrees to provide all labor, materials, tools and equipment or other means and promptly unload all reinforcement bars from cars delivered at Redding, California, check and haul the same to the job site and provide suitable warehouse or other means of protection for any material requiring storage or protection, in accordance with the provisions of paragraph 23 of said specifications applicable to the unloading, handling and placement of reinforcing bars.”

“24—Materials to be Furnished by the Subcontractor:

“The subcontractor at its own cost agrees to provide all labor, wire, wire ties, rods or other materials and appliances used for securing reinforcement bars, metal or other temporary supports, if used, to hold reinforcement bars during the placing of concrete, including backing-up strip required for welding, in accordance with the provisions of paragraph 24 of said specifications”

“45—Welding Reinforcing Bars:

“The subcontractor at its own cost agrees to provide all labor, materials and equipment and cut the ends of the bars for welding and provide all clamps, tie rods, cables, blocking, anchors, and other accessories that may be required, including the placement of backing-up strips and shall firmly and securely hold the reinforcing bars in position while the joints are being welded in accordance with the provisions of paragraph 45 of said specifications, excepting

therefrom only the labor, materials and equipment necessary for the welding of the joints for which work other contractors will be employed.”

“66—Reinforcement Bars:

“The subcontractor at its own cost agrees to provide all labor, materials, tools, accessories and equipment and perform and observe all the provisions contained in paragraph 66 of said specifications.”

“Time is of the essence of this agreement and the subcontractor agrees that it will proceed with the placing of reinforcement bars in sections of the piers and abutments made ready for such placement immediately after being notified by the contractor of the readiness of each section and prosecute the same diligently to completion, unless prevented by strikes, lockouts or other contingencies beyond its control.”

“The subcontractor agrees that the contractor shall have the right to use its rigs and equipment upon the job for the purpose of lifting and hoisting materials, equipment and forms at all times, when the same is not in use by the subcontractor, free from any charge, except that said contractor agrees to assume all risk or loss to said equipment, from said contractor’s use thereof, and shall save the subcontractor harmless from any damage, claim or loss arising from said use.

“The contractor at its own cost agrees to provide an accessible roadway from Highway 99 to the base of all piers and [24] abutments; construct a wooden trestle over and about the base of all pier excavations and construct wooden cores as shown on the plans which may be used by the subcontractor as a

supplementary support for reinforcement bars; said subcontractor assuming the risk of any damage to said trestles or cores arising directly or indirectly from the use thereof and shall save and hold harmless said contractor from any damages, claims or losses."

\* \* \*

"The contractor agrees to pay said subcontractor for placing reinforcement bars at the rate of \$22.50 per ton for reinforcement bars actually placed in accordance with the plans and specifications which shall be considered as full compensation for unloading, warehousing, hauling, bending and placing reinforcement bars and clamps, and doing all work necessary or incidental thereto and for furnishing all tie wire, clamps and supporting devices."

\* \* \*

"Payments are to be made to subcontractor on or about the 10th of the following month for 85% of the value of the work performed during the preceding month, and the remaining 15% to be paid thirty days after completion of said subcontractor's portion of the work."

That Cross-defendant, Soule Steel Company, did not prosecute the work under said subcontract diligently and to completion as in said subcontract provided, and said cross-defendant failed, refused and neglected to do all work necessary and incident to the placing of said reinforcement bars, and in particular Soule Steel Company failed, refused and neglected to provide the necessary temporary supports

and supporting devices, and cross-plaintiff was required to and did provide and supply the said temporary supports and supporting devices; and that the reasonable cost of providing and supplying the said temporary supports and supporting devices was the sum of \$58,835.22.

## VII.

That during the progress of the work under the said subcontract, and at the special instance and request of Soule Steel Company, Union Paving Co. performed certain services in connection with moving, raising and repairing of the boom used by said Soule Steel Company; and that the said services were of the agreed and the reasonable value of \$1,893.82, as more specifically set forth in the attached Exhibit "C", no part of which [25] said sum has been paid or credited to Union Paving Co.

## IX.

That during the progress of the work under the said subcontract, and at the special instance and request of Soule Steel Company, Union Paving Co. performed other services for the said Soule Steel Company; that the said other services were of the agreed and the reasonable value of \$383.58, as more specifically set forth in the attached Exhibit "D", no part of which has been paid or credited to Union Paving Co.

## X.

That by reason of the facts and services aforesaid, Soule Steel Company became, and is, indebted to



Union Paving Co. in the sum of \$61,112.62, with interest thereon at the rate of 7% per annum from the respective dates that the said acts and services were so performed by Union Paving Co., no part of which has been paid or credited to Union Paving Co.

Wherefore, Union Paving Co. respectfully requests that this Court determine and decree that Soule Steel Company became, and is, indebted to Union Paving Co. in the amount of \$61,112.62, and interest, by reason of the acts and facts hereinabove set forth; that Union Paving Co. recover its costs of suit herein, and that it have such other and further relief as to the Court may seem meet and proper in the premises

Dated: October 16th, 1942.

HENRY F. WRIGLEY

Attorney for Cross-plaintiff.

[26]

State of California,  
City and County of San Francisco—ss.

A. Lawton, being first duly sworn, deposes and says: That he is an officer, to-wit: The President of Union Paving Co., a corporation, one of the defendants, and the cross-plaintiff, and that he makes this verification for and on behalf of said corporation and said defendants above named; that he has read the above and foregoing answer and cross-claim, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

A. LAWTON

Subscribed and sworn to before me this 16th day of October, 1942.

[Seal]

CATHERINE E. KEITH

Notary Public, in and for the City and County of San Francisco, State of California.

Receipt of a copy of the above and foregoing answer and cross-claim is hereby admitted this 17th day of October, 1942.

MAX THELEN

THELEN & MARRIN

COURTNEY L. MOORE [27]

### EXHIBIT "C"

#### Miscellaneous Charges Against Soule Steel Company Moving and Repairs to Boom.

	Amount.
7/ 9/40 Slacking guy wires	\$ 7.18
7/21/40 Setting Chicago boom—Pier 2	13.05
8/27/40 Raise derrick—Pier 7	75.24
9/10/40 Remove derrick—Pier 7	64.04
9/11/40 Repair boom—Pier 2	104.34
9/13/40 Raise boom—Pier 2	37.62
9/20/40 Raise boom—Pier 2	30.32
9/29/40 Repair boom—Pier 2	71.53
9/30/40 Repair boom—Pier 2	128.86
10/13/40 Lower boom—Pier 2—Move to Pier 3	90.43
10/15/40 Rigging for boom—Pier 3	45.21
1/21/41 Raise boom—Pier 3	22.46
1/24/41 Raise boom—Pier 3	60.08
1/24/41 Set bar—Pier 3	1.82
2/24/41 Change block on boom—Pier 3	14.59
3/ 5/41 Repair Chicago boom—Pier 4	14.55
Matls. 1-3c 30 Amp 600V. switch 1-15 HP magnetic switch & 1 push button station	20.60



## Amount.

3/ 6/41	Raise Chicago boom—Pier 4	104.42
3/ 8/41	Lower Chicago boom—Pier 3	26.11
3/13/41	Repair Chicago boom—Pier 4	3.63
3/19/41	Raise Chicago boom—Pier 4	59.21
4/ 8/41	Raise boom—Pier 4	39.16
4/ 9/41	Raise boom—Pier 4	15.73
4/15/41	Repair signal line—Pier 4	3.14
4/23/41	Raise Chicago boom—Pier 4	64.68
4/24/41	Repairs Chicago boom—Pier 4	1.71
4/28/41	Repair signal line—Pier 4	1.71
5/ 1/41	Raise boom—Pier 4	37.62
5/ 4/41	Repair grids—Hoist—Pier 4	7.18
5/11/41	Repair grids—Hoist—Pier 4	1.03
5/12/41	Repair grids—Hoist—Pier 4	1.71
11/ 8/40	Raise boom—Pier 3	14.59
11/19/40	Raise boom—Pier 3	33.69
11/25/40	Bracing for guy derrick—Pier 4	30.61
11/27/40	Raise boom—Pier 3	28.22
12/16/40	Raise boom—Pier 3	88.82
1/ 9/41	Raise boom—Pier 3	44.62

Materials furnished for signal system

Soule Steel Co. Hoist:

500 ft. #18 portable line	18.60
1—110 V. Benjamine Honker	7.50
3—Twist lock caps & bodies	3.00
1—Weather proof lamp socket	.06
1—30 watt lamp	.15
1—30 amp switch & fuses	6.23
2—Edwards push button switches	7.15
Sales tax	1.29

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 \$1453.49

Additional guy lines necessary on tower  
at Piers 2, 3 and 4 to support Chicago  
boom

2800 ft. @ 9¼c plus tax	268.16
10% overhead	172.17

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 \$1893.82

[28]

## EXHIBIT "D"

Miscellaneous Charges Against Soule Steel  
Company

## Additional Miscellaneous Charges:

5/29/40	Wage outlay caused by incomplete steel placement Pier 1	\$ 38.91
7/ 8/40	Wage outlay caused by incomplete steel placement Abutment 4	22.28
8/9 & 10	Set boom on tower—Pier 2	105.15
8/20/40	Erect rig, raise boom—Pier 2	57.43
10/15 & 17	Raise and repair boom—Pier 6	135.14
9/ 5/40	Clear space for steel—Pier 5	3.13
2/12/40	Operator for air compressor—Pier 4	10.03
4/15/41	Labor for Soule so-called "additional bracing"—Pier 4	8.38
5/20/41	Labor for Soule so-called "additional bracing"—Pier 4	3.13
		<hr/>
		\$383.58

Receipt of Service

[Endorsed]: Filed Oct. 17, 1942. [29]

In the District Court of the United States, in and  
for the Northern District of California South-  
ern Division

No. 22,308-R

UNITED STATES OF AMERICA for use and  
benefit of SOULE STEEL COMPANY, a cor-  
poration,

Plaintiff,

vs.

UNION PAVING CO., a corporation, PACIFIC  
INDEMNITY COMPANY, a corporation, and  
MARYLAND CASUALTY COMPANY, a cor-  
poration,

Defendants.

### ANSWER TO CROSS-CLAIM

Now Comes the Soule Steel Company, a corpora-  
tion, and answering the cross-claim of the Union  
Paving Company, a corporation, admits, denies and  
alleges as follows:

#### I.

Admits the allegations contained in Paragraphs  
I, II, III, IV and V of the cross-claim.

#### II.

Denies generally and specifically, each and all of  
the allegations contained in Paragraphs VII, VIII,  
and IX of the cross-claim (erroneously numbered  
Paragraphs VII, IX and X). [30]

## III.

Answering paragraph VI of the cross-claim, admits that the portions of the contract as quoted therein are correctly quoted, and that said quotations formed a portion of the contract between the parties, but that they do not constitute the entire contract. That said contract in its entirety is set forth as Exhibit "B" to the complaint on file herein, which exhibit is hereby by reference made a part hereof.

In this connection cross-defendant alleges that in the erection of the piers and abutments and of the sections thereof it was necessary for said cross-complainant to erect falsework and also temporary scaffolding, which said scaffolding was to be used in the pouring of concrete, and it was understood and agreed between the parties that said cross-plaintiff would erect at its cost said falsework and scaffolding in advance of the placing of the reinforcement bars, and would notify cross-defendant when said scaffolding was so erected, and that after said notification, said cross-defendant would place, secure and maintain said reinforcement bars in position by attaching same to the falsework or scaffolding through the medium of templates and other supporting devices. Said contract providing:

"Time is of the essence of this agreement and the sub-contractor agrees that it will proceed with the placing of reinforcement bars in sections of the piers and abutments made ready for such placement immediately after being notified by the contractor of the readiness of each sec-

tion and prosecute the same diligently to completion, unless prevented by strikes, lockouts or other contingencies beyond its control.”

The cross-defendant upon being notified by the cross-plaintiff of the readiness of said piers and abutments proceeded with the placement of said reinforcement bars and supported the same in place by attachment through the medium of templates [31] or other supporting devices to the said scaffolding and falsework so erected as aforesaid by said cross-plaintiff.

Cross-defendant paid all the expenses and costs of so placing and supporting the said reinforcement bars, and none of the same was paid or supplied by the cross-plaintiff.

That the said sum of Fifty Eight Thousand Eight Hundred Thirty Five and 22/100 (\$58,835.22), or any other sum which is claimed to have been expended by said cross-plaintiff was not expended in supplying or providing temporary supports or supporting devices for said reinforcement bars, but was used in the erection of the said scaffolding or falsework which was used by the cross-plaintiff in the pouring of concrete.

Wherefore cross-defendant prays that cross-plaintiff take nothing by reason of said cross-claim.

Dated: November 20th, 1942.

COURTNEY L. MOORE,  
MAX THELEN,  
THELEN & MARRIN,

Attorneys for cross-defendant.

State of California,

City and County of San Francisco—ss.

D. J. Stoddard, being first duly sworn, deposes and says:

That Soule Steel Company, for whose use and benefit the above action is brought, is a corporation; that affiant is an officer of said corporation, to-wit, the Secretary thereof, and that as such officer he makes this verification for and on behalf of said corporation; that affiant has read said complaint and knows the contents thereof and that the same is true of his own knowledge except as to matters which are therein stated on information or belief, and as to those matters, that he believes it to be true.

D. J. STODDARD

Subscribed and sworn to before me this 20th day of November, 1942.

[Seal]

LOUIS WIENER.

Notary Public in and for the City and County of San Francisco, State of California.

(Receipt of Service.)

[Endorsed]: Filed Nov. 21, 1942. [33]



In the District Court of the United States, in and  
for the Northern District of California South-  
ern Division

No. 22,308-R

UNITED STATES OF AMERICA for use and  
benefit of SOULE STEEL COMPANY, a cor-  
poration,

Plaintiff and  
Cross-Defendant,

vs.

UNION PAVING CO., a corporation, et al,  
Defendants and  
Cross-Complainants.

AMENDMENT TO THE ANSWER TO  
CROSS-COMPLAINT

Now Comes the above named cross-defendant and  
by stipulation between the parties, amends the an-  
swer to the cross-complaint by adding to Paragraph  
III of said answer the following:

Except as to the facts thus admitted, this cross-  
defendant denies generally and specifically all facts,  
matters and things set forth in the allegations of said  
Paragraph VI of said cross-complaint.

Dated: November 25th, 1942.

COURTNEY L. MOORE,  
MAX THELEN.  
THELEN & MARRIN. [34]



STIPULATION PERMITTING PLAINTIFF  
TO AMEND ANSWER TO THE CROSS-  
COMPLAINT

It Is Hereby Stipulated and Agreed that the answer to the cross-complaint may be amended as aforesaid.

Dated: November 25th, 1942.

HENRY F. WRIGLEY,  
Attorney for Defendants and  
Cross-Complainants

It Is So Ordered.

Dated: November 30th, 1942.

MICHAEL J. ROCHE,  
Judge of the District Court.

[Endorsed]: Filed Nov. 30, 1942. [35]

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District Court of the United States  
Northern District of California  
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Mon-

day, the 19th day of April, in the year of our Lord one thousand nine hundred and forty-three.

Present: the Honorable Michael J. Roche, D. J.

[Title of Cause.]

No. 22308-R. Civil

**ORDER DENYING MOTION TO STRIKE  
CERTAIN TESTIMONY**

The parties hereto being present as heretofore, the further trial of this case was this day resumed. Mr. Wrigley made a motion to strike certain testimony, and after argument by Mr. Wrigley and Mr. Moore, it is Ordered that said motion to strike certain testimony be denied. The evidence being closed, and the case, after argument by the attorneys, being submitted and fully considered, it is Ordered that judgment be entered in favor of plaintiff on findings of fact and conclusions of law, and that the defendant take nothing on the cross-claim. [36]

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[Title of District Court and Cause.]

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

The above-entitled cause coming on regularly for trial before the Honorable Michael J. Roche, on the 8th day of April, 1943, continuing with intermissions to the 19th day of April, 1943, was thereupon submitted to the Court for decision. Plaintiff appeared by attorneys Messrs. Thelen & Marrin, and Courtney L. Moore, Esq., and defendants, Union Paving Co.,

a corporation, Pacific Indemnity Company, a corporation, and Maryland Casualty Company, a corporation, appeared by attorney Henry F. Wrigley, Esq., and evidence both oral and documentary having been introduced, the Court thereafter announced its decision, [37]

Now, Therefore, the Court having been fully advised in the premises, makes the following written findings of fact and conclusions of law:

## FINDINGS OF FACT

### I.

That Soule Steel Company, the party for whose use and benefit this action is brought is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California and having its principal office and place of business in the City and County of San Francisco, State of California.

### II.

That Union Paving Co. is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of Nevada and engaged, and authorized to engage, in business in the State of California and having its principal office and place of business within the State of California, in the City and County of San Francisco.

### III.

That Pacific Indemnity Company is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the

laws of the State of California and doing, and authorized to do, a surety business in the State of California.

#### IV.

That Maryland Casualty Company is, and at all times herein mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, and doing, and authorized to do, a surety business in the State of California, and having its principal office and place of business within the State of California, in the City and County of San Francisco. [38]

#### V.

That heretofore, to-wit, on or about November 4, 1939, defendant Union Paving Co. made and entered into a contract in writing with the United States of America, acting by and through the Bureau of Reclamation, Department of the Interior, for the construction by said Union Paving Co. of public work of the United States, namely, abutments and piers, Pit River Bridge Relocation of Southern Pacific Railroad and U. S. Highway 99, Kennett Division, Central Valley Project, California; that the contract price to be paid for said work under said contract was the sum of \$1,138,288.00; and that said contract was to be performed and executed in the Northern District of California.

#### VI.

That before said contract was awarded to said Union Paving Co., said corporation furnished to the United States a payment bond, dated November 4,

1939, in which said Union Paving Co., as principal, and said Pacific Indemnity Company and said Maryland Casualty Company, as sureties, are held and firmly bound unto the United States of America in the penal sum of \$455,315.20, for the payment of which sum well and truly to be made, said principal and said *sureties* bound themselves, their heirs, executors, administrators and successors as in said bond specified; that the condition of said bond was that, whereas said Union Paving Co. entered into said contract of November 4, 1939, with The United States of America, now, therefore, if said Union Paving Co. should promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract which might thereafter be made, notice of which modifications to the sureties was expressly waived, then the obligation of the bond should be void but otherwise to remain in full force and virtue; that said bond was intended to protect and did protect [39] said Soule Steel Company, which corporation, as hereinafter specified, supplied labor and materials as subcontractor in the prosecution of the work provided for in said contract of November 4, 1939.

## VII.

That subsequent to the execution of said contract and payment bond, that is on or about January 6, 1940, plaintiff entered into a subcontract in writing with the defendant, Union Paving Co., wherein and whereby plaintiff agreed to furnish and supply all

necessary labor, materials, tools, appliances and equipment required for unloading, warehousing, hauling, bending and placing reinforcing bars, and to do all work necessary or incidental thereto, and to furnish all tie wires, clamps, and supporting devices; said reinforcement bars to be placed in accordance with the plans and specifications and the contract of November 4, 1939, between the Union Paving Co. and the United States of America, for a price of \$22.50 per ton for the reinforcing bars so actually placed.

### VIII.

That there was erected by the defendant, Union Paving Co., in Abutment No. 1 and Piers 1, 2, 3, 4, 5, 6, and 7, falsework, scaffolding and interior framework which was used by the defendant, Union Paving Co., in pouring and placing the concrete in said abutment and piers; and by the plaintiff in supporting, placing and securing in position the reinforcing bars.

That the defendant, Union Paving Co., contends that under the terms and provisions of said contract of January 6, 1940, that it was the duty and obligation of the plaintiff to erect and to pay the cost of the erection of said falsework, scaffolding and interior framework in said Abutment No. 1, and in said piers above the base thereof. That the plaintiff, on the other hand, contends that under the terms and provisions of [40] said contract that it was the duty and obligation of the said defendant, Union Paving Co., to erect and to pay the cost of the



1939, in which said Union Paving Co., as principal, and said Pacific Indemnity Company and said Maryland Casualty Company, as sureties, are held and firmly bound unto the United States of America in the penal sum of \$455,315.20, for the payment of which sum well and truly to be made, said principal and said *sureties* bound themselves, their heirs, executors, administrators and successors as in said bond specified; that the condition of said bond was that, whereas said Union Paving Co. entered into said contract of November 4, 1939, with The United States of America, now, therefore, if said Union Paving Co. should promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract which might thereafter be made, notice of which modifications to the sureties was expressly waived, then the obligation of the bond should be void but otherwise to remain in full force and virtue; that said bond was intended to protect and did protect [39] said Soule Steel Company, which corporation, as hereinafter specified, supplied labor and materials as subcontractor in the prosecution of the work provided for in said contract of November 4, 1939.

## VII.

That subsequent to the execution of said contract and payment bond, that is on or about January 6, 1940, plaintiff entered into a subcontract in writing with the defendant, Union Paving Co., wherein and whereby plaintiff agreed to furnish and supply all



necessary labor, materials, tools, appliances and equipment required for unloading, warehousing, hauling, bending and placing reinforcing bars, and to do all work necessary or incidental thereto, and to furnish all tie wires, clamps, and supporting devices; said reinforcement bars to be placed in accordance with the plans and specifications and the contract of November 4, 1939, between the Union Paving Co. and the United States of America, for a price of \$22.50 per ton for the reinforcing bars so actually placed.

### VIII.

That there was erected by the defendant, Union Paving Co., in Abutment No. 1 and Piers 1, 2, 3, 4, 5, 6, and 7, falsework, scaffolding and interior framework which was used by the defendant, Union Paving Co., in pouring and placing the concrete in said abutment and piers; and by the plaintiff in supporting, placing and securing in position the reinforcing bars.

That the defendant, Union Paving Co., contends that under the terms and provisions of said contract of January 6, 1940, that it was the duty and obligation of the plaintiff to erect and to pay the cost of the erection of said falsework, scaffolding and interior framework in said Abutment No. 1, and in said piers above the base thereof. That the plaintiff, on the other hand, contends that under the terms and provisions of [40] said contract that it was the duty and obligation of the said defendant, Union Paving Co., to erect and to pay the cost of the

erection of said falsework, scaffolding and interior framework in said Abutment No. 1 and in said piers.

The Court finds that said contract is uncertain, ambiguous and indefinite in that it does not clearly and certainly appear therein whose duty and obligation it was to so erect and pay the cost of the erection of said falsework, scaffolding and interior framework in said Abutment No. 1 and in said piers.

The Court further finds that in the preliminary negotiations leading up to the making of the contract of January 6, 1940, it was represented by the defendant, Union Paving Co., that it would erect and pay the cost of the erection of the falsework, scaffolding and interior framework, and that the plaintiff could use the same when erected without cost to itself for the purpose of supporting, placing and securing in position the reinforcing bars. That plaintiff, relying on such representations, eliminated from their estimates the cost of a steel structure for such support, placing and securing in position said reinforcing bars, and reduced their estimate from \$28.60 per ton to \$24.80 per ton, and subsequently to \$22.50 per ton, which was the contract price. That on December 29, 1939, it was verbally understood and agreed by and between the parties that said defendant was to erect and to pay the cost of the erection of such falsework, scaffolding and interior framework and that the plaintiff would place, support and secure in position such reinforcing bars for a price of \$22.50 per ton, and should have the right to use the said falsework, scaffolding and in-

terior framework erected by the said defendant free of any charge for such use.

The Court further finds that said defendant, Union Paving Co., prepared the contract of January 6, 1940, and that any ambiguity, uncertainty or indefiniteness which may exist in said [41] contract with respect to whose duty and obligation it was to erect and to pay the cost of the erection of said falsework, scaffolding and interior framework was caused by the said defendant in failing to clearly, certainly and definitely set forth in said written contract of January 6, 1940, the oral understandings theretofore reached by the parties with respect to the erection, payment of cost, and use of said falsework, scaffolding and interior framework.

The Court further finds that the plaintiff at the time of the execution of the agreement of January 6, 1940, understood the following provision contained therein:—

“the subcontractor agrees that it will proceed with the placing of the reinforcement bars in sections of the piers and abutments made ready for such placement immediately after being notified by the contractor of the readiness of each section”

to mean and the Court hereby finds it did mean that said defendant, Union Paving Co., would erect and pay for the cost of the erection of said falsework, scaffolding and interior framework, and that plaintiff would have the right to use the same without cost to support, place and secure the reinforcing

bars. That said defendant, Union Paving Co., at the time plaintiff executed and signed said agreement of January 6, 1940, knew that the plaintiff understood the foregoing provision of the agreement in the manner above set forth.

The Court further finds that the parties have, by their acts, since the execution of said contract of January 6, 1940, construed and interpreted said contract to the effect that said defendant would erect and pay the cost of the erection of said falsework, scaffolding and interior framework, and that the plaintiff would have the right to use the same free of charge for the support and placement of said reinforcing bars, by the following acts: [42]

a) That plaintiff, in accordance with the provisions of the agreement of January 6, 1940, did from March, 1940, to September 30, 1940, render monthly bills for the placement of the reinforcing bars placed during each preceding month at the price provided in said contract, namely, \$22.50 per ton. That said monthly bills were accepted by the said defendant without dispute and were paid up to September 30, 1940, without any objection to the correctness of the same and without any suggestion that said bills were not proper, nor that the full amount of said bills was not due and owing, nor that said bills were subject to any counter-charge.

b) That from January 6, 1940, to October 18, 1940, said defendant erected all of the falsework, scaffolding and interior framework that was required in the construction of said abutment and

piers during said period of time, and purchased and paid for the material and labor needed in the erection of the said abutment and piers, and never suggested nor in any way demanded that plaintiff pay for the same or any portion thereof.

c) That from January 6, 1940, to October 18, 1940, during the progress of the work plaintiff used said falsework, scaffolding and interior framework to support and place said reinforcing bars, and no charge was made by said defendant for the use of the same.

d) That during all of said time, from January 6, 1940, to October 18, 1940, plaintiff had the free use of said falsework, scaffolding and interior framework without any suggestion on the part of the defendant, Union Paving Co., that it was in any way plaintiff's duty or obligation under said contract to pay for or to erect the said falsework, scaffolding and interior framework.

e) That during said period of time from January 6, 1940, to October 18, 1940, said defendant never conferred with plain- [43] tiff in any way as to the type of materials, cost of materials or manner of construction of said falsework, scaffolding and interior framework.

f) That said defendant on or about the 6th day of January, 1940, set up a system of cost keeping, and during all of said period of time, from January 6, 1940 to October 18, 1940, charged the cost of construction of said falsework, scaffolding and interior framework to itself as the cost of pouring concrete,



and did not, in said cost records, charge any of said cost of construction of said falsework, scaffolding and interior framework to plaintiff as a part of the cost of the supporting and placing of the reinforcing bars.

g) That during said period of time said defendant did not on its general books of account make any charge of any kind against the plaintiff for the cost of construction of said falsework, scaffolding and interior framework.

### IX.

The Court finds that it was the mutual intention of the parties as it existed at the time of the making of the contract of January 6, 1940, that said defendant, Union Paving Co., should erect and pay the cost of the erection of the falsework, scaffolding and interior framework of Abutment No. 1 and Piers 1, 2, 3, 4, 5, 6, and 7, and that the plaintiff should not erect or pay any of the cost of the erection of said falsework, scaffolding and interior framework, but that plaintiff should have the right without cost to use said falsework, scaffolding and interior framework for the purpose of supporting, placing and securing in position the reinforcing bars.

### X.

That on or about October 18, 1940, for the first time, and never before, said defendant, Union Paving Co., made claim to the plaintiff that there was a duty and obligation upon the [44] plaintiff under the terms of said contract of January 6, 1940, to



erect and to pay the cost of the erection of said falsework, scaffolding and interior framework. That at said time, and ever since, plaintiff has denied that it was under any duty or obligation to erect or to pay the cost of the erection of said falsework, scaffolding and interior framework.

## XI.

That on September 30, 1940, plaintiff rendered its monthly bill for the reinforcing bars placed in the month of September, 1940, which said bill had not been paid on October 18, 1940, which was the time when the defendant, Union Paving Co., for the first time made claim that it was the duty and obligation of the plaintiff to erect and to pay the cost of the erection of said falsework, scaffolding and interior framework. That subsequently thereto and until the completion of the placing by the plaintiff of said reinforcing bars in accordance with the plans and specifications of the United States of America, to-wit; until July 16th, 1941, plaintiff rendered each month to the defendant, Union Paving Co., monthly bills for the reinforcing bars placed during each particular month. That said defendant, Union Paving Co., refused to pay said monthly bills or any part thereof, except on January 18, 1941, it paid to the said plaintiff the sum of Twenty Thousand Dollars (\$20,000), said defendant retaining and refusing to pay said moneys so billed under the claim that it was the duty and obligation of the plaintiff to erect and to pay the cost of erection of said falsework, scaffolding and interior framework.

## XII.

That the United States of America allowed the defendant, the Union Paving Co., credit for placing 11,066,250 pounds, or 5,533.125 tons, of reinforcing steel, and deducted from the sum allowed, the sum of \$102.18 for 4,720 pounds of reinforcing steel [45] furnished but unaccounted for. That there became due to plaintiff from the defendant, Union Paving Co., the sum of \$124,495.31 for placing 5,533.125 tons of reinforcing steel at the price provided for in said contract, namely, \$22.50 a ton, from which there should be deducted the sum of \$102.18 charged by the United States of America as aforesaid, or a total amount due to plaintiff for the placing of said reinforcing steel of \$124,393.13. That plaintiff sold and delivered certain additional services to and for said defendant, Union Paving Co., all of which were necessary for and were actually used in the prosecution of the work provided for in said contract of November 4, 1939, having the reasonable value of \$671.84, and said defendant, Union Paving Co., **promised and agreed to pay the said sum to plaintiff for the same.**

## XIII.

That on account of the matters hereinbefore alleged said defendants, and each of them, became indebted to plaintiff in the sum of \$125,064.97; that on or before July 18, 1941, there had been paid or credited on account of said indebtedness the sum of \$47,712.35 and no more; and that on said July 18, 1941, there was due, owing and unpaid from said defendants, and each of them, to plaintiff on account

of the matters hereinbefore alleged, the sum of \$77,352.62.

#### XIV.

That on or about July 18, 1941, plaintiff demanded from defendants, and each of them, the payment of said sum of \$77,352.62, together with interest thereon at the rate of seven per cent (7%) per annum from said July 18, 1941, to date of payment, but that defendants, and each of them, have failed and refused to pay the same or any part thereof, with the exception of the sum of \$16,000.00 which was paid by defendant, Union Paving Co., on December 31, 1941, and that from and after January 1, 1942, there was due, owing and unpaid from said defendants, and each of them, [46] and there is now due, owing and unpaid from said defendants, and each of them, to plaintiff on account of the matters hereinbefore alleged the sum of \$61,352.62, together with interest on said sum of \$77,352.62 from July 18, 1941, to and including December 31, 1941, at the rate of 7% per annum, and interest on said sum of \$61,352.62 at the rate of 7% per annum from January 1, 1942.

#### XV.

That the Court finds that the allegations contained in the cross-complaint are not true except the allegations contained in Paragraphs I, II, III, IV, V and VI, pertaining to the corporate organizations of the party litigants to the making of the contract between the United States of America and the defendant, Union Paving Co., to the providing of the payment

bonds by the Pacific Indemnity Company and the Maryland Casualty Company, and to the making of the contract between the defendant, Union Paving Co., and the plaintiff, which allegations the Court finds to be true.

The Court further finds that the allegations, and each and all of them, contained in Paragraph VI of the cross-complaint to the effect that the cross-defendant, Soule Steel Company, did not prosecute the work under said contract diligently and to the completion of the subcontract as provided and that said cross-defendant failed, refused and neglected to do all the work necessary and incident to the placing of said reinforcement bars, and in particular that said cross-defendant, Soule Steel Company, failed, refused and neglected to provide the necessary temporary supports and supporting *devises*, and that the cross-defendant was required to but did not supply the said temporary supports and supporting devices and that the reasonable costs of supporting and providing said temporary supports and supporting devices is the sum of \$58,835.22 are not true, but to the contrary the Court finds that the cross-defendant, Soule Steel Company, did pro-[47] secute the work under said contract diligently and to completion, and did do all the work necessary and incident to the placing of the reinforcing bars, and did provide the necessary temporary supports and supporting devices other than falsework, scaffolding and interior framework with regard to which findings have heretofore been made. The

Court further finds that the Union Paving Co. did not provide or supply any such temporary supports or supporting devices and the Cross-defendant, the Soule Steel Company, is not indebted for the cost of providing and supplying the said temporary supports and supporting devices in the sum of \$58,835.22, or in any other sum, or in any portion of said sum of \$58,835.22, but on the contrary as heretofore found, said Union Paving Co. was, under the terms of the contract, required to provide the falsework, scaffolding and interior framework and to permit the free use of the same.

The Court further finds the allegations found in Paragraph VII, IX, and X of said cross-complaint are, each and all of them, untrue; and that any services claimed to have been rendered by the Union Paving Co. to the plaintiff in the sum of \$1,893.82 or \$385.58 were expended by said Union Paving Co. in the construction and erection of said falsework, scaffolding and interior framework, which, as heretofore found, said Union Paving Co. was under obligation to erect and to permit the free use of it by the plaintiff.

### CONCLUSIONS OF LAW

From the foregoing findings of fact, the Court reaches the following conclusions of law:

#### I.

That under the terms and provisions of the contract of January 6, 1940, between the plaintiff and the defendant, Union Paving Co., it was the duty



and obligation of the Union Paving Co. to erect and to pay the cost of the erection of the falsework, [48] scaffolding and interior framework in Abutment No. 1, and Piers Nos. 1, 2, 3, 4, 5, 6, and 7, and to allow plaintiff the free use of the same when erected for the purpose of placing, supporting and securing in position the reinforcement bars. That the Union Paving Co., has retained and refused to pay to the plaintiff the sum of \$61,352.62, under the claim that it was the duty and obligation of the plaintiff to erect and to pay the cost of the erection of said falsework, scaffolding and interior framework. That said claim is without merit, and said defendant, Union Paving Co., is indebted to the plaintiff in the sum of \$61,352.62, plus interest.

## II.

The defendant, Union Paving Co., by its declarations, acts and admissions intentionally and deliberately led the plaintiff to believe that it would erect and pay the cost of erecting the falsework, scaffolding and interior framework of Abutment No. 1, and Piers Nos. 1, 2, 3, 4, 5, 6, and 7, and that the plaintiff would have the right to use the same free of charge for the purpose of placing, supporting and securing in position the reinforcing bars. That the plaintiff believed said representations and so believing acted upon such belief, in that it reduced the charge that it had intended to make for placing, supporting and securing in position the reinforcing bars. That as a result thereof defendant, Union



Paving Co., is now estopped to deny the existence of such declaration, act or admission, or to be permitted to falsify it.

### III.

That defendant, Union Paving Co., take nothing by its cross-complaint.

### IV.

That defendants, Pacific Indemnity Company and Maryland Casualty Company are legally obligated under the payment bond [49] given by said defendants to make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract between the United States of America and the defendant, Union Paving Co., if the principal, the Union Paving Co., does not promptly make such payment, and that plaintiff is a person who has supplied labor and materials and as such is entitled to enforce said bond and recover from said bonding companies. That the principal, the Union Paving Co., has not promptly made such payment, and judgment should be entered against said bonding companies.

### V.

That plaintiff recover judgment, jointly and severally, against said defendants and each of them, for the sum of \$61,352.62, together with interest on the sum of \$77,352.62, from July 18, 1941, to and including December 31, 1941, at the rate of 7% per annum from January 1, 1942, to date, and for its costs of suit incurred herein.

Let judgment be entered accordingly.

Dated: May 10th, 1943.

MICHAEL J. ROCHE

Judge of the District Court.

(Receipt of Service)

[Endorsed]: Filed May 10, 1943. [50]

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District Court of the United States, Northern  
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 10th day of May, in the year of our Lord one thousand nine hundred and forty-three.

Present: the Honorable Michael J. Roche, D. J.

[Title of Cause.]

No. 22308-R. Civil

ORDER ENTERING JUDGMENT FOR  
PLAINTIFFS

This case came on regularly this day for hearing of motion to fix costs. On motion of Courtney Moore, Esq. for plaintiff, it is Ordered that judgment be entered for plaintiff in accordance with the findings of fact and conclusions of law this day filed, with costs taxed at \$299.21. [51]

In the District Court of the United States, in and for the Northern District of California, Southern Division.

No. 22308-R

UNITED STATES OF AMERICA, for use and benefit of SOULE STEEL COMPANY, a corporation,

Plaintiff and  
Cross-Defendant,

vs.

UNION PAVING CO., a corporation, PACIFIC INDEMNITY COMPANY, a corporation, and MARYLAND CASUALTY COMPANY, a corporation,

Defendants and  
Cross-Complainants.

### JUDGMENT

The above-entitled cause coming on regularly for trial before the Honorable Michael J. Roche, on the 8th day of April, 1943, and thereafter submitted on the 19th day of April, 1943, plaintiff appearing by attorneys Messrs. Thelen & Marrin, and Courtney L. Moore, Esq., and defendants appearing by attorney Henry F. Wrigley, Esq., and evidence both oral and documentary having been introduced, the Court thereafter directed judgment as prayed for in the complaint, and denied judgment on the cross-complaint of defendant Union Paving Co., and having

made its written findings of fact and conclusions of law, renders judgment as follows: [52]

It Is Ordered, Adjudged and Decreed that plaintiff do have and recover from defendants, Union Paving Co., a corporation, Pacific Indemnity Company, a corporation, and Maryland Casualty Company, a corporation, the sum of Sixty Nine Thousand Six Hundred and Forty Three and 48/100 Dollars (\$69,643.48), consisting of (a) the sum of Sixty One Thousand Three Hundred Fifty Two and 62/100 Dollars (\$61,352.62) as principal, (b) the sum of Twenty Four Hundred Forty Five and 33/100 Dollars (\$2445.33) as interest on the sum of Seventy Seven Thousand Three Hundred Fifty Two and 62/100 Dollars (\$77,352.62) at the rate of seven per cent per annum from July 18, 1941, to and including December 31, 1941, and (c) the sum of Fifty Eight Hundred Forty Five and 53/100 Dollars (\$5845.53) as interest on the sum of Sixty One Thousand Three Hundred Fifty Two and 62/100 Dollars (\$61,352.62) at the rate of seven per cent per annum from January 1, 1942, to and including May 10, 1943.

## II.

It Is Further Ordered, Adjudged and Decreed That plaintiff do have and recover from the defendants, Union Paving Co., a corporation, Pacific Indemnity Company, a corporation, and Maryland Casualty Company, a corporation, the sum of Two Hundred Ninety Nine and 21/100 Dollars (\$299.21), as and for costs and expenses as fixed by the Court.

III.

It Is Further Ordered, Adjudged and Decreed that the defendant, Union Paving Co., take nothing by its cross-complaint.

Dated: May 10th, 1943.

MICHAEL J. ROCHE

Judge of the District Court

(Receipt of Service)

[Endorsed]: Filed May 10, 1943. [53]

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[Title of District Court and Cause.]

NOTICE OF MOTION TO FIX COSTS

To the defendants, Union Paving Co., a corporation, Pacific Indemnity Company, a corporation, and to Maryland Casualty Company, a corporation, and to Henry F. Wrigley, their attorney:—

You Will Please Take Notice that the plaintiff in the above-entitled action will move the above-entitled Court on Monday, May 10, 1943, the Honorable Michael J. Roche presiding, for an order fixing and determining costs, and that attached hereto and made a part hereof is the cost bill of plaintiff's expenditures.

Dated: May 4th, 1943

THELEN & MARRIN

COURTNEY L. MOORE

Attorneys for Plaintiff [54]

[Title of District Court and Cause.]

PLAINTIFF'S MEMORANDUM OF COSTS  
AND DISBURSEMENTS

1942

Sept. 17	Clerk's deposit, filing complaint.....	\$ 10.00
17	U. S. Marshal's fee service of complaint on Union Paving Co. and Maryland Casualty Company .....	4.20
23	U. S. Marshal's fee (Los Angeles) serv- vice of complaint on Pacific Indem- nity Company .....	2.06

1943

Apr. 1	Deposition of J. A. Dowling Hart & Hart—reporters— .....	40.50
	Louis Wiener—Notary Public .....	15.00
19	Court Reporter's fee, including daily transcript .....	227.45

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TOTAL.....\$299.21

[55]

State of California

City and County of San Francisco—ss

Courtney L. Moore, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff in the above-entitled action and as such is better informed as to the above costs and disbursements than the said plaintiff, and for that reason makes this affidavit on behalf of plaintiff; that, to the best of deponent's knowledge and belief, the items in the above memorandum set forth are correct and that the disbursements have been necessarily incurred in said action.

COURTNEY L. MOORE



Subscribed and sworn to before me this 4th day  
of May, 1943,

(Seal)                      ALFRED D. MARTIN

Notary Public in and for the City and County of  
San Francisco, State of California.

(Receipt of Service)

[Endorsed]:    Filed May 4, 1943. [56]

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[Title of District Court and Cause.]

NOTICE OF ASSOCIATION OF ATTORNEY

To the plaintiff above named, and to Messrs. Thelen  
& Marrin and Courtney L. Moore, Esq., its at-  
torneys:

You, and Each of You, Will Please Take Notice,  
that Dion R. Holm, with offices at 206 City Hall,  
San Francisco, California, is hereby associated as  
attorney of record for defendants in the above en-  
titled action with Henry F. Wrigley, Esq.

Dated:    May 7th, 1943

UNION PAVING CO.

By J. A. DOWLING

President

I hereby consent to the association of Dion R.  
Holm with me as attorney for defendants.

HENRY F. WRIGLEY

Accepted.

DION R. HOLM

Receipt of a copy of the foregoing original is hereby admitted this 12th day of May, 1943.

THELEN & MARRIN

COURTNEY L. MOORE

Attorneys for Plaintiff and  
Cross-Defendant.

[Endorsed]: Filed May 18, 1943. [58]

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[Title of District Court and Cause.]

### MOTION FOR NEW TRIAL

To the plaintiff and cross-defendant above named,  
and to Messrs. Thelen & Marrin and Courtney  
L. Moore, Esq., its attorneys:

You, and Each of You, Will Please Take Notice that the defendants and cross-complainants Union Paving Co., Pacific Indemnity Company, and Maryland Casualty Company, intend to and do hereby move the above entitled court to vacate and set aside the decision rendered and the judgment entered in the above entitled action and to grant a new trial of said cause, upon the following grounds:

1. Insufficiency of the evidence to justify the decision and judgment, as the same are contrary to the evidence and to the law applicable to the facts of the case; [59]

2. Errors in law occurring at the trial and excepted to by defendants and cross-complainants;

3. In failing to find that plaintiff and cross-defendant did not:

(a) give notice of rescission of the contract as is required by law;

(b) rescind the contract;

4. In failing to find that plaintiff and cross-defendant proceeded with the work provided for under the contract after it was aware and notified defendants and cross-complainants did not consider the construction of falsework was part of their contract, and accepted benefits in the form of payments after such notice;

5. In the admission of evidence excepted to by defendants and cross-complainants and the rejection of evidence offered by defendants and cross-complainants.

Said motion will be made and based upon the transcript, records, files and minutes of the above court.

Dated: May 17, 1943.

HENRY F. WRIGLEY

DION R. HOLM

Attorneys for Defendants and  
Cross-Complainants

Stay of execution is hereby ordered pending determination of motion for new trial to 28 day of May 1943.

MICHAEL J. ROCHE

Judge.

Receipt of a copy of the foregoing original is hereby admitted this 17th day of May, 1943.

THELEN & MARRIN

COURTNEY L. MOORE

Attorneys for Plaintiff and  
Cross-Defendant.

[Endorsed]: Filed May 18, 1943. [60]

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[Title of District Court and Cause.]

## ORDER DENYING MOTION FOR NEW TRIAL

The Motion for New Trial made by the defendants and cross-complaints herein having been heretofore heard and submitted and being now by the Court fully considered, it is by the Court Ordered that said Motion for New Trial be, and the same is hereby Denied.

Dated: July 7, 1943.

MICHAEL J. ROCHE

United States District Judge

[Endorsed]: Filed July 7, 1943. [61]

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[Title of District Court and Cause.]

## NOTICE OF APPEAL

Notice is hereby given that Union Paving Co., a corporation, Pacific Indemnity Company, a corporation, and Maryland Casualty Company, a corpora-

tion, defendants and cross-complainants above named, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment herein heretofore signed and entered. Said judgment is dated May 10, 1943, and was filed and entered on the same day.

August 6th, 1943.

HENRY F. WRIGLEY

DION R. HOLM

Attorneys for Defendants and  
Cross-Complainants

[Endorsed]: Filed Aug. 19, 1943. [71]

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[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL UNDER RULE 75 RULES OF  
CIVIL PROCEDURE

To All Concerned:

Please take notice that defendants and cross-complainants Union Paving Co., a corporation, Pacific Indemnity Company, a corporation, and Maryland Casualty Company, a corporation, defendants herein, have filed notice of appeal herein, and, pursuant to Rule 75 Rules of Civil Procedure do hereby designate for inclusion in the record on appeal the com-

plete record and all the proceedings and evidence herein.

San Francisco, California,

August 6th, 1943.

HENRY F. WRIGLEY

DION R. HOLM

Attorneys for Defendants and  
Cross-Complainants

(Receipt of Service)

[Endorsed]: Filed August 19, 1943. [72]

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District Court of the United States  
Northern District of California

**CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL**

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 76 pages, numbered from 1 to 76, inclusive, together with 4 Volumes of Reporter's Transcript and 1 deposition contain a full, true, and correct transcript of the records and proceedings in the case of United States of America, Ex Rel Soule Steel Co., Etc., vs. Union Paving Company, et al., Etc. No. 22308-R., as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Thirty-three dollars and sixty-



five cents (\$33.65) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 7th day of September A. D. 1943.

(Seal)

C. W. CALBREATH

Clerk

WM. J. CROSBY

Deputy Clerk. [77]

In the Southern Division of the United States District Court, in and for the Northern District of California

No. 22308-R

UNITED STATES OF AMERICA, for use and  
Benefit of SOULE STEEL COMPANY, a corporation,

Plaintiff,

vs.

UNION PAVING CO., a corporation, PACIFIC  
INDEMNITY COMPANY, a corporation, and  
MARYLAND CASUALTY COMPANY, a corporation,

Defendants.

### TRANSCRIPT OF TESTIMONY

Thursday, April 8, 1943.

Counsel Appearing:

For Plaintiff:

Courtney L. Moore, Esq.,

For Defendants:

Henry F. Wrigley, Esq.

Before: Hon. Michael J. Roche, Judge.

The Clerk: United States Ex rel Soule Steel  
Company v. Union Paving Company.

Mr. Moore: Ready.

Mr. Wrigley: Ready.

The Court: Proceed, gentlemen.

Mr. Moore: In this matter, your Honor, I will  
dispense with an opening statement of what we ex-

pect to prove, because I believe the facts will be very quickly developed. I will call Mr. Soule. [1\*]

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EDWARD L. SOULE

called as a witness for plaintiff; sworn.

The Clerk: Q. Will you state your name?

A. Edward L. Soule.

Direct Examination

Mr. Moore: Q. Mr. Soule, you are connected with the plaintiff in this case, the Soule Steel Company, are you?

A. Yes, sir, the president.

Q. And you were in 1939? A. Yes, sir.

Q. In what capacity? A. As president.

Q. Are you in charge of their management, too?

A. Yes, sir.

Q. And have been during all that period of time?

A. Yes, sir.

Mr. Moore: Your Honor, in the complaint the plaintiff is the Soule Steel Company, the defendant the Union Paving Company, the Pacific Indemnity Company and the Maryland Casualty Company. Their corporation organization is alleged and is admitted by the answer.

It is alleged that the Union Paving Company entered into a contract with the United States of America, acting through the Bureau of Reclamation, Department of Interior, for the construction

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\* Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of Edward L. Soule.)

of the abutments and piers on the Pit River bridge relocation, which is a part of the Shasta Dam project, for the sum of \$1,138,288, I believe it is. That is admitted by the answer.

It is alleged that the Union Paving Company, before said contract was awarded, provided bonds by the Pacific Indemnity and the Maryland Casualty Company for the payment of all bills. That allegation is admitted.

It is alleged that on January 6, 1940 the plaintiff herein, the Soule Steel Company, entered into a subcontract in writing with the defendant Union Paving Company to supply or replace [2] the reinforcing steel on the piers and the abutments. A copy of the contract is attached to the complaint. The execution of that contract is admitted.

It is alleged that between January 6, 1940 and May 31, 1941, 1, that the plaintiff supplied all the labor and materials required to be performed for the sum of \$124,393.13. That is not admitted. It is admitted to this extent, that it is admitted that they performed certain services of the value of, I believe, \$63,280.51.

It is alleged in the nature of an extra on the work that the plaintiff performed additional work there in the sum of \$671.84. That extra is admitted by the answer.

It is alleged that the defendant Union Paving Company, or the defendants became indebted to the Soule Steel Company in the sum of \$125,064.97. That is denied, but it is alleged that \$47,712.35 was

(Testimony of Edward L. Soule.)

paid on that indebtedness, leaving due a sum of \$77,352.62. That is denied.

It is alleged that subsequently, on December 31, 1941, an additional \$16,000 was paid by the Union Paving Company to the Soule Steel Company. That payment is admitted by the answer.

The complaint asks for a judgment for the difference between the \$125,064.97, which is arrived at by the value of erecting the steel, plus the extras, less the payments. The contract provides, your Honor, that the payments shall be at the rate of \$22.50 a ton for the reinforcing steel placed in the piers.

Mr. Soule, did the Soule Steel Company place steel in the piers and abutments on the Pit River Bridge?      A. Yes, sir.

Q. About when did they commence the placement of that steel?

A. Sometime early in January of 1940; I think about January [3] 12 or 14th.

Q. By the way, the steel, itself, was furnished by the Government, is that correct?

A. By the United States Government.

Q. And the contract covers the placing of that steel, your Honor. I call your attention, Mr. Soule, to this provision of the contract:

“Payments are to be made to the contractor on or about the 10th of the following month for 85 per cent of the value of the work performed during the preceding month, the remaining 15 per cent to be paid 30 days after

(Testimony of Edward L. Soule.)

the completion of said subcontractor's portion of the work."

I will ask you, as the work proceeded did you render progress billings for the steel placed in the previous months?      A. That is correct.

Q. I call your attention, Mr. Soule, to a bill on your letterhead, entitled, "Estimate No. 1," and ask you on or about the date which that bears, which is March 27th, was that bill forwarded to the Union Paving Company?      A. Yes, sir, it was.

Mr. Moore: I will ask that that be admitted in evidence and marked with an appropriate number.

The Court: What is its date?

Mr. Moore: I was going to say, it is dated March 27, 1940, Estimate No. 1, for the installation of reinforcing steel as per contract, 19-1/2 tons, \$22.50 a ton, \$438.75; less 15 per cent retention, \$65.81: Balance \$372.94.

(The document in question was marked "Plaintiff's Exhibit 1.")

# PLAINTIFF'S EXHIBIT No. 1

## ESTIMATE #1

	Unit Price
For the installation of reinforcing steel	
as per contract	
19½ tons      22.50 ton	438.75
Less 15% Retention	65.81
	<hr/>
	\$372.94

[Endorsed]: Filed 4/8/43.



(Testimony of Edward L. Soule.)

Mr. Moore: Q. Now, at the end of the following month, on April 30, 1940, did you render another progress billing for steel placed to the Union Paving Company?

A. Yes, our regular [4] monthly billing, that adds up to this date.

Q. I will ask you one question before I offer it. In giving the number of tons placed, it included the total tons to that date, with a deduction for those previously billed, is that correct?

A. That is correct.

The Court: I did not follow that. Will you read that last question, Mr. Reporter?

(Question read.)

Mr. Moore: We will offer this—and this is for the following month, and is for 115 tons, amounting to \$2587.50, less the 15 per cent retention and less the amount of \$372.94 that had been billed the previous month, leaving \$1826.43.

(The document was marked “Plaintiff’s Exhibit 2.”)

## PLAINTIFF’S EXHIBIT No. 2

### ESTIMATE #2

	Unit Price
For the installation of reinforcing steel to date, as per contract      115 tons      22.50 ton	\$2587.50
Less 15% Retention	388.13
	<hr/>
Less previously billed	372.94
	<hr/>
	\$1826.43

[Endorsed]: Filed 4/8/43.

(Testimony of Edward L. Soule.)

Mr. Moore: Q. At the end of May, Mr. Soule, you rendered another progress billing for the steel placed up to that date, is that correct?

A. That is correct.

Q. And you followed the same process of billing for the total amount to that date, deducting what had been previously billed?

A. That is correct.

Q. Without repeating the question, the further progress billing in that same process continued?

A. That continued throughout the job.

Mr. Moore: This is for 230 tons up to that date, your Honor.

The Court: You have everything but the date on there.

Mr. Moore: The date is May 31, 1940.

(The document was received in evidence and marked "Plaintiff's Exhibit 3.")

### PLAINTIFF'S EXHIBIT No. 3

#### ESTIMATE #3

	Unit Price
For the installation of reinforcing steel, to date,	
as per contract 230 tons 22.50 ton	5175.00
Less 15% Retention	776.25
	<hr/>
	4398.75
Less previous billing	2199.37
	<hr/>
	\$2199.38

[Endorsed]: Filed 4/8/43.

(Testimony of Edward L. Soule.)

Mr. Moore: Q. On July 1, as of June 29th, a further progress billing was made, which was estimate No. 4, for the steel placed up to that date, is that correct?

A. That is correct; the same [5] procedure followed.

Q. Amounting to 527 tons to that date.

(The document was received in evidence and marked "Plaintiff's Exhibit 4.")

# PLAINTIFF'S EXHIBIT No. 4

## ESTIMATE #4

	Unit Price
For the installation of reinforcing steel, to date,	
as per contract 527 tons 22.50 ton	11,857.50
Less 15% Retention	1,778.63
	<hr/>
	10,078.87
Less previous billing	4,398.75
	<hr/>
	\$5,680.12

[Endorsed]: Filed 4/8/43.

Mr. Moore: Q. Estimate 5, dated July 29, 1940, covers the steel to that date in the amount of 1027 tons, is that correct? A. That is correct.

Q. And Estimate 6, August 30, covers the steel placed as of that date, of 1445 tons, is that correct?

A. Again that is correct.

(The last two documents referred to were received in evidence and marked, respectively, Plaintiff's Exhibits 5 and 6.)

(Testimony of Edward L. Soule.)

## PLAINTIFF'S EXHIBIT No. 5

## ESTIMATE #5

For the instalation of reinforcing steel, to date,	
as per contract 1027 T. 22.50 T.	23,107.50
Less 15% Retention	3,466.13
	<hr/>
	19,641.37
Less previous billing	10,078.87
	<hr/>
	\$9,562.50

[Endorsed]: Filed 4/8/43.

## PLAINTIFF'S EXHIBIT No. 6

## ESTIMATE #6

For the installation of reinforcing steel, to date,	
as per contract 1445 tons 22.50/ton	32,512.50
Less 15% Retention	4,876.88
	<hr/>
	27,635.62
Less previous billing	19,641.37
	<hr/>
	\$ 7,994.25

[Endorsed]: Filed 4/8/43.

Mr. Moore: Q. Estimate No. 7, Mr. Soule, dated September 30, was the billing for the steel up to that time amounting to 2000 tons, is that correct?

A. Yes, sir.

(The document was marked "Plaintiff's Exhibit 7.")

(Testimony of Edward L. Soule.)

PLAINTIFF'S EXHIBIT No. 7

ESTIMATE #7

For the installation of reinforcing steel, to date,		
as per contract	2000 tons	22.50/ton
		45,000.00
Less 15% Retention		6,750.00
		<hr/>
		38,250.00
Less previous billing		27,635.62
		<hr/>
		\$10,614.38

[Endorsed]: Filed 4/8/43.

Mr. Moore: It might simplify things, Mr. Wrigley, if I offered these together and stated what they are. I will offer, your Honor, the following documents as one exhibit:

Estimate 8, dated October 31, 1940, covering the steel placed as of that date, amounting to 2912 tons.

Estimate 9, November 29, covering 3648 tons;

December 31, 1940, Estimate No. 10, 4083 tons;

January 31, 1941, Estimate No. 11, amounting to 4389 tons;

February 28, 1941, Estimate No. 12, for 4683 tons;

March 31, 1941, Estimate No. 13, covering 5056 tons;

Estimate No. 14, dated April 30, 1941, covering 5338½ tons;

Estimate No. 15, dated May 31, 1941, covering 5532.3 tons;

(Testimony of Edward L. Soule.)

Final estimate No. 16, covering the placing of 5533.124 tons, dated June 26, 1941. [6]

Mr. Wrigley: Just to clear one thing, Mr. Moore, those figures that you give there in all cases are the cumulated figures?

Mr. Moore: Those are the cumulated figures, and those progress billings that I referred to were mailed to the Union Paving Company on the dates they bore.

The Witness: That is correct, Mr. Moore.

(The documents referred to were thereupon received in evidence and marked "Plaintiff's Exhibit 8.")

### PLAINTIFF'S EXHIBIT No. 8

#### ESTIMATE #8

For the installation of reinforcing steel, to date,	
as per contract      2912 tons    22.50/ton	65,520.00
Less 15% retention	9,828.00
	<hr/>
	55,692.00
Less previous billing	38,250.00
	<hr/>
	\$17,442.00

#### ESTIMATE #9

For the installation of reinforcing steel, to date,	
as per contract      3648 tons    22.50 ton	82,080.00
Less 15% retention	12,312.00
	<hr/>
	69,768.00
Less previous biling	55,692.00
	<hr/>
	\$14,076.00



(Testimony of Edward L. Soule.)

## ESTIMATE #10

For the installation of reinforcing steel, to date,		
as per contract	4083 tons 22.50 ton	91,867.50
Less 15%		13,780.13
		<hr/>
		78,087.37
Less Previous billing		69,768.00
		<hr/>
		\$ 8,319.37

## ESTIMATE #11

For the installation of reinforcing steel, to date		
as per contract	4389 tons 22.50 ton	98,752.50
Less 15% retention		14,812.88
		<hr/>
		83,939.62
Less previous billing		78,087.37
		<hr/>
		\$ 5,852.25

## ESTIMATE #12

For the installation of reinforcing steel to date,		
as per contract	4683 tons 22.50 ton	\$105,367.50
Less 15% retention		15,805.13
		<hr/>
		89,562.37
Less previous billing		83,939.62
		<hr/>
		\$ 5,622.75

## ESTIMATE #13

For the installation of reinforcing steel to date		
as per contract	5056 tons 22.50 @ ton	113,760.00
Less 15% retention		17,064.00
		<hr/>
		96,696.00
Less previous billing		89,562.37
		<hr/>
		\$ 7,133.63

(Testimony of Edward L. Soule.)

## ESTIMATE #14

For the installation of reinforcing steel to date as per contract. 5338½ tons 22.50 ton	\$120,116.25
Less 15% retention	18,017.44
	<hr/>
	\$102,098.81
Less previous billing	96,696.00
	<hr/>
	\$ 5,402.81

## ESTIMATE #15

For the installation of reinforcing steel as per contract 5532.3 tons 22.50 ton	124,476.75
Less 15% retention	18,671.51
	<hr/>
	105,805.24
Less prior billing	102,098.81
	<hr/>
	\$ 3,706.43

## FINAL ESTIMATE #16

For the installation of reinforcing steel in the Pit River Job as per agreement dated January 6, 1940, as follows:	
5533.124 tons @ \$22.50 per ton	\$124,495.29
Less previous amount billed	105,805.24
	<hr/>
	\$ 18,690.05

[Endorsed]: Filed 4/8/43.

Mr. Moore: Q. Now, did you send on July 16, 1941 a revised final estimate? A. Yes.

Q. And this document is the revised final estimate that was sent on July 16, 1941, is that correct? A. Yes, sir.

(Testimony of Edward L. Soule.)

Mr. Moore: We will offer this as a separate exhibit.

(The document was received in evidence and marked "Plaintiff's Exhibit 9.")

PLAINTIFF'S EXHIBIT No. 9

REVISED FINAL ESTIMATE #16

To revise biling for the installa- / tion of reinforcing steel in the Pit River Job as per agreement dated January 6, 1940 as fol- lows:		
Previously billed	5533.124 tons	
	22.50 T	124,495.29
Should be as per your letter of 7-9-41		
5533.125 tons @	22.50 T	124,495.31
Less steel unaccounted for 4720#		
	102.18	124.393.13
		<hr/>
		\$ 102.16

[Endorsed]: Filed 4/8/43.

Mr. Moore: Q. Referring to those documents, Mr. Soule, the work of placing the reinforcing steel was completed about what date?

A. I don't remember exactly. I think you will have to refresh my mind on some document. May I see that last estimate?

Q. Referring to the final Estimate No. 16, can you tell us?

A. When the work of the Soule Steel Company was completed there, it would be somewhere as of

(Testimony of Edward L. Soule.)

this date, June 26, 1941, or just prior to that time.

Q. Now, Mr. Soule, in the final revised estimate, 16, it states, "Should be as per your letter of July 9, 1941." I will call your attention to a letter dated July 9, 1941, on the letterhead of the Union Paving Company, signed apparently by A. Lawton; is that the letter that you have reference to in the Revised Estimate?

A. That is correct. This stipulates the tonnage which [7] the Bureau of Reclamation allowed the contractor, and which was our controlling final billing amount.

Mr. Moore: I will offer this letter, with the appropriate number.

(The document was received in evidence and marked "Plaintiff's Exhibit 10.")

The Court: I suggest that you read it.

Mr. Moore: I will read it, your Honor. It is addressed to the Soule Steel Company, 1750 Army Street, San Francisco, California, and is dated July 9, 1941:

"Gentlemen:

Re: Piers and Abutments

Pit River Bridge

"We are in receipt of the Bureau of Reclamation's June, 1941 estimate for the above-noted project.

"While the placement of reinforcement steel has been completed, the estimate is semi-final.

"Credit is allowed for the placement of 11,066,250

(Testimony of Edward L. Soule.)

pounds of reinforcement bars and a charge of \$102.-18 for 4,720 pounds of bars unaccounted for.

“You will perhaps recall that the footing in Abutment #3 was raised above the depth shown on the plans which may have resulted in this discrepancy.

“Should you desire to further check these figures or elect to accept the same, we would thank you to advise us of your pleasure and at the same time communicate with us with a view to arranging a meeting to discuss our differences and if possible arrive at an amicable settlement of our account.

“Very truly yours,

UNION PAVING CO.”

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Mr. Moore: Q. And your final estimate was received in accord- [8] ance with that figure, is that correct? A. That is correct.

Mr. Moore: I might say, your Honor, that is the figure which is alleged in the complaint reduced to tonnage and multiplied by \$22 .50.

Q. Did you check or have confirmed to you the figure that had been given to you in the letter of July 9, 1941, that has just been read, that is, get a confirmation from the United States Department of Interior as to those figures?

A. We did.

Q. And the letter I hand you——

A. And this letter here is on the letterhead of

(Testimony of Edward L. Soule.)

the Department of the Interior, confirming those exact amounts.

Mr. Moore: We will offer this, your Honor. This is a letter from the United States Department of the Interior, Bureau of Reclamation, addressed to the Soule Steel Company:

“Gentlemen:

“Reference is made to your letters of June 30, and July 10, 1941, requesting advice in regard to payments to the Union Paving Company for placing reinforcing bars under specifications No. 877, Pit River bridge.

“The Union Paving Company has been paid to date \$221,325.00 for placing 11,066,250 pounds of reinforcing bars, and a deduction of \$102.18 has been made from the Company’s account for 4,720 pounds of reinforcing bars furnished to the Company but not used in Government work. The last progress payment was made July 11, 1941, voucher No. 13-3996 (D-634).

“Very truly yours,

“S. O. HARPER,  
Chief Engineer.”

(The document in question was received in evidence and marked “Plaintiff’s Exhibit 11.”)

[9]

Mr. Moore: Q After receiving that confirmation from the Government, did you address a communication to the Union Paving Company on or about July 17, 1941?



(Testimony of Edward L. Soule.)

A. This was addressed to them under a registered letter, return receipt demanded, and this is a carbon copy of that letter.

Mr. Moore: We will offer this in lieu of the original, Mr. Wrigley.

Mr. Wrigley: No objection.

(The document was received in evidence and marked "Plaintiff's Exhibit 12.")

# PLAINTIFF'S EXHIBIT No. 12

SUBCONTRACT OF JANUARY 6, 1940, BETWEEN UNION PAVING CO. AND SOULE STEEL COMPANY—STATEMENT OF CHARGES OF SOULE STEEL COMPANY AGAINST UNION PAVING CO. AND OF CREDITS ALLOWED BY SOULE STEEL COMPANY AND PAYMENTS MADE TO SOULE STEEL COMPANY.

July 15, 1941.

## 1. Charges against Union Paving Co.

(a) For the unloading, warehousing, hauling, bending and placing reinforcement bars and clamps, and doing all work necessary or incidental thereto and for furnishing all tie wire, clamps and supporting devices at Pit River Bridge job, as per subcontract of January 6, 1940, between Union Paving Co., as contractor, and Soule Steel Company, as subcontractor:

11,066,250 lbs. of reinforcement	
bars=5,533.125 tons @ \$22.50	
per ton	\$124,495.31
Deduct 4,720 lbs. of reinforcement	
bars furnished but unaccounted	
for	102.18 \$124,393.13

(b) For other work done and materials supplied by Soule Steel Company on said job for the benefit and at the request of Union Paving Co.:

(Testimony of Edward L. Soule.)

“Gentlemen:

“The work which the undersigned contracted to do for you under the above subcontract of January 6, 1940, was completed by the undersigned, in full compliance with all the provisions of said subcontract, on May 30, 1941.

“Enclosed herewith you will find a statement entitled ‘Subcontract of January 6, 1940 Between Union Paving Company and Soule Steel Company—Statement of Charges of Soule Steel Company against Union Paving Company and of Credits allowed by Soule’ Steel Company and payments made to Soule Steel Company—July 15, 1941. As appears from said statement, the sum of \$77,352.62 is now due and payable by you to the undersigned.

“Demand is hereby made upon you for the payment of said sum of \$77,352.62, together with interest thereon [10] at the rate of 7 per cent per annum from July 18, 1941 to date of payment.”

That is the date after the letter.

“Please acknowledge receipt of this letter.

“Yours truly,

“SOULE STEEL COMPANY,

By Edward L. Soule, President;

“Attest”—

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Q. Who is this? A. D. C. Stoddard.

Mr. Moore: “D. J. Stoddard, Secretary.”

Attached is the bill—I will merely summarize it, your Honor—charges against the Union Paving

(Testimony of Edward L. Soule.)

Company for 11,066,250 pounds of reinforcement bars, which is the same figure which is in these other letters, equaling 5533.125 tons, at \$22.50 a ton, \$124,-495.31; deduct 4720 pounds of reinforcing bars furnished but unaccounted for, \$102.18—that was the one mentioned in the letter—or a balance of \$124,-393.13.

(b) For other work done and material supplied by Soule Steel Company on said job for the benefit of and at the request of Union Paving Company—and there are some eight or nine of these items—they aggregate \$671.84, and that is the extra which is alleged in the complaint and which is admitted.

Credits are allowed the Union Paving Company for some dozen items or more amounting to \$1,100.06, and payments in cash amounting to \$46,-612.29 or a total credits and payments of \$47,712.35, and the amount now due and unpaid, payable by the Union Paving Company to the Soule Steel Company, is \$77,352.62.

Q. Calling your attention to this letter, Mr. Soule, the cash payments that are noted there on July 27, 1940, of \$5000, [11] August 14, \$12,486.25, September 21, 1940, \$9126.04, on January 18, 1940 of \$20,000—those payments were made by the Union Paving Company to the Soule Steel Company at the time set opposite? A. Yes.

Q. And were received by that company?

A. Yes.

Q. Now, subsequent to the rendition of this bill, Mr. Soule, there was an additional \$16,000 paid on account, is that correct? A. Yes.

(Testimony of Edward L. Soule.)

Mr. Moore: The date of that is set forth in the complaint and admitted in the answer, your Honor, which, deducted from the bill, here, of \$77,352.62, would leave a balance of \$61,352.62.

Q. Has that or any part of it ever been paid?

A. No, sir.

Q. Mr. Soule, did you inquire from the United States Government whether there had been a final settlement between the Government and the Union Paving Company? A. We did.

Q. Did you receive this communication in return to your inquiry?

A. Yes, this is the communication.

Mr. Moore: We will offer this.

(The document was marked "Plaintiff's Exhibit 13" in evidence.)

Mr. Moore: "Dated May 15, 1942.

"To Whom It May Concern:

"It is hereby certified, in accordance with Section 3 of the Act of August 24, 1935, 49 Stat. 793, that final settlement under Contract No. 12r-10788, dated November 4, 1939, between the United States, represented by R. F. Walter, Contracting Officer, and the contractor, Union Paving Company, was made November 3, 1941."

Signed, R. N. Elliott, Assistant Comptroller General of the [12] General of the United States, and it is on the letterhead of the Assistant Comptroller General of the United States, and bears a seal on it. I do not know what the seal is, your Honor, but there is a seal.

(Testimony of Edward L. Soule.)

Q. Mr. Soule, I will hand you a photostatic copy of the agreement between the Soule Steel Company and the Union Paving Company, and direct your attention to certain of the provisions therein. Under the figure "23" it reads as follows:

"The Subcontractor at its own cost agrees to provide all labor, materials, tools, and equipment or other means and promptly unload all reinforcement bars from cars delivered at Redding, California, check and haul the same to the job site and provide suitable warehouse or other means of protection for any material requiring storage or protection, in accordance with the provisions of paragraph 23 of said specifications applicable to the unloading, handling and placement of reinforcing bars."

I might say, your Honor, this numeral 23 refers to the general specifications by the United States Government. When it says, "Paragraph 23," it refers to the Government contract with the Union Paving Company.

"24—Materials to be furnished by the Subcontractor: The Subcontractor at its own cost agrees to provide all labor, wire, wire ties, rods or other materials and appliances used for securing reinforcement bars, metal or other temporary supports, if used, to hold reinforcement bars during the placing of concrete, including backing-up strip required for welding, in accordance with the provisions of paragraph 24 of said specifications.



(Testimony of Edward L. Soule.)

“45—Welding reinforcing bars: The Subcontractor at [13] its own cost agrees to provide all labor, materials and equipment and cut the ends of the bars for welding and provide all clamps, tie rods, cables, blocking, anchors, and other accessories that may be required, including the placement of backing-up strips, and shall firmly and securely hold the reinforcing bars in position while the joints are being welded, in accordance with the provisions of paragraph 45 of said specifications, excepting therefrom only the labor, materials and equipment necessary for the welding of the joints, for which work other contractors will be employed.

“66—Reinforcement bars:

“The Subcontractor at its own cost agrees to provide all labor, materials, tools, accessories and equipment and perform and observe all the provisions contained in paragraph 66 of said specifications.”

Calling your attention, Mr. Soule, to paragraph 66 of the General Specifications, and to the latter part thereof—not the earlier part—to the following provisions:

“Reinforcement bars shall be accurately placed and secured in position so that they will not be displaced during the placing of the concrete, and special care shall be exercised to prevent any disturbance of the reinforcement



(Testimony of Edward L. Soule.)

bars in concrete that has already been placed. Metal chairs, metal hangers, metal spacers, or other metal supports satisfactory to the Contracting Officer, may be furnished and used by the Contractor for supporting reinforcement bars. Wherever necessary, in the opinion of the contractor, to prevent future damage to the concrete or unsightly rust stains on exposed concrete surfaces, [14] all such supports for reinforcement bars shall be made of noncorrodible metal."

Having called those various provisions of the contract to your attention, Mr. Soule, I will ask you what the Soule Steel Company did in the matter of performing or carrying out the requirements of those particular provisions or those provisions of the contract; if you will just state in detail what you did.       A. We did all of these things.

Mr. Wrigley: I ask that be stricken out as too general.

Mr. Moore: Yes.

Q. Will you just detail it? Take it in sequence from the beginning of the job.

A. I will take it in sequence as it happened on the job, as I recall.

Q. Yes.

A. We received the bars f.o.b. cars at Redding, California.

The Court: Q. That was your first contact with it, the cars at Redding?

(Testimony of Edward L. Soule.)

A. The contract stipulated that the Government would furnish reinforcing bars according to certain lists f.o.b. cars, Redding, California. We received those reinforcing bars f.o.b. cars, Redding, California, unloaded them, took them to stock piles, made a careful list, and reported the list to the Bureau of Reclamation, and reported it to the Contractor. We sorted and stored the material, cut the material to length, bent it, shaped the ends of the 2-inch bars in accordance with the specifications; we provided whatever storage was required and reported where there was any rusted material, and did the brushing or cleaning, as required by the Engineers.

We next hauled it to the particular pier and abutment sites. We furnished the equipment, the hoisting equipment and other devices that would put it in position, and furnished the labor, the [15] wire, and other accessories to hold it in position and supported it on the falsework built by the Union Paving Company for their work. I think that included all the different things to complete the job. And one other thing: We furnished the clamps and clamped the bars together, each of the vertical bars together that way to be welded. The welding contractor took off the clamps and returned those to us, and then we re-used those on up on the piers.

Mr. Moore: Q. In other words, the Soule Steel Company did not do the welding?

A. We did not do the welding.

(Testimony of Edward L. Soule.)

Q. But you put the clamps on to hold them in position for the welding?

A. That was part of our work.

Q. Were the Government inspectors on the job, Mr. Soule?

A. Yes, sir.

Q. Were they there constantly?

A. They were there constantly.

Q. Was all this work done under their supervision?

A. Yes, sir.

Q. Will you tell his Honor how they function— if they approved of the work, how it was done?

Mr. Wrigley: Pardon me. I think this witness ought to qualify himself in some way, showing he was up there at any particular time, and ever saw what was done.

Mr. Moore: If you raise that—

Mr. Wrigley: Yes.

Mr. Moore: Mr. Stevens is here. He was the superintendent. I will withdraw the question in light of that.

Q. You do know that there were Government Inspectors on the job?

A. Yes, I was on the job. I talked to them in several instances.

Q. You can go ahead and testify if that is the case. You were on the job when the inspectors were there?

A. Yes, sir. [16]

Q. Did you talk to them?

A. Yes, sir.

Q. Will you then explain how the work was carried on—and they supervised the work, did they?

(Testimony of Edward L. Soule.)

A. They interpreted the plans and specifications, and it was their function to declare as to whether or not the work was done in conformance with their plans and specifications.

Q. And if it was not done in that way, what happened?

A. They would say that it had to be remedied, and it was their final action, of course, to pass upon whether it was done according to the plans and specifications, and their requirement was, of course, it would pass to their satisfaction.

Q. After it had passed, then the concrete was poured around these bars, is that correct?

A. That is correct.

Q. But they would not permit the concrete to be poured until the bars——

A. They would not allow the concrete to be poured until the bars were placed in satisfactory position and all details completed according to their interpretation of the plans and specifications.

Q. And, as was shown here, the piers and abutments were all finally completed and accepted by the Government, is that correct?

A. They wouldn't allow the pouring of concrete, and the evidence that it was poured was the acceptance of our portion of the work, because this material was entirely embedded in concrete.

Q. After the welding?

A. Yes, that is correct.

Mr. Moore: That is all.

(Testimony of Edward L. Soule.)

Cross-Examination

Mr. Wrigley: Q. Mr. Soule, starting from the date of the contract in this case between the Union Paving Company and the Soule Steel Company, which was January 6, 1940, how many times [17] were you up to the Pit River job?

A. Three or four times.

Q. Fix those dates, roughly.

A. I went up one time with Mr. Dowling on December—Mr. Moore, I can fix those dates because our telephone operator kept dates of telephone calls for me. I can fix those accurately.

Q. Pardon me for interrupting. I think you misunderstood the question.

A. At one time Mr. Dowling and I, on December 20th and 21st, 1939, went up to the job—

Mr. Wrigley: I ask that that be stricken out as not responsive. I asked this witness to tell me how many times he was up to that job, and fix the dates, after January 6, 1940.

The Court: Very well. We will take a recess and you can check it up.

(Recess.)

Mr. Moore: If your Honor please, Mr. Wrigley has very kindly called my attention to a matter. I handed him two letters that he had not seen, and I neglected to introduce them, so I will offer them at this time. They bear the same date as the demand which was made upon the Union Paving Company for payment, and are practically the same

(Testimony of Edward L. Soule.)

in substance, although they do not have attached to them a copy of the account, but they show demand on the Pacific Indemnity Company, which was one of the sureties, dated July 17, 1941, the letter reading:

“Demand for the payment of said sum of \$77,352.62 has been made by the undersigned upon Union Paving Company, but said company has failed and refused to pay said sum or any part thereof.

“Demand is accordingly herewith made upon you, as one of the sureties in said payment bond, that you pay to the undersigned said sum of \$77,352.62 with interest thereon at [18] the rate of 7 per cent per annum from July 18, 1941 until date of payment.”

(The document was thereupon received in evidence and marked “Plaintiff’s Exhibit 14.”)

Mr. Moore: And an identical letter, dated the same day, July 17, addressed to the Maryland Casualty Company, the other surety.

(The document was thereupon received in evidence and marked “Plaintiff’s Exhibit 15.”)

Mr. Wrigley: Q. Now, just before the recess, Mr. Soule, you were asked how many times after January 6, 1940 were you up to the Pit River job.

A. Four times that I can definitely pin times down on—at the construction of Abutment No. 1 on the south side——

Q. Approximately what date?



(Testimony of Edward L. Soule.)

A. What is that?

Q. Approximately what date?

A. That was approximately in the latter part of February or early March. One time when Mr. Sparling was in charge of the job, when Mr. Stevens was on his vacation; another time later in the fall 1940, Mr. Stevens and I went over principally the north—the construction of the north part of the piers, and when I returned from figuring the Bonneville Dam, I stopped in to the job site.

Q. When you refer to Mr. Stevens, you refer to the man that was up there as superintendent and was a partner with you on that job?

A. That is correct.

Q. Now, going to your first date, which you think was in February or March, when you state that you were at Abutment No. 1——

A. Yes, sir.

Q. Can you give me the date that Soule Steel Company placed the first steel on any abutment or pier on that job?

A. Early in [19] January, and I believe about the middle of the month.

Q. In January—I assume you mean 1940——

A. 1940.

Q. Where did you place any steel?

A. That had to do more with the handling. Some material had come into Redding and had been delivered by the Union Paving Company before we took over the job. We had to take over the han-

(Testimony of Edward L. Soule.)

dling of that steel, because it was incorrectly deposited up at Abutment No. 1.

Q. When was the date that you placed the first steel in place on any pier or abutment?

A. I do not recall.

Q. As a matter of fact, you were not even there at that time, were you?

A. In March, in the latter part of February or March.

Q. When they placed the first steel?

A. No, I wasn't at the pier at the placing of the first steel.

Q. When you were there in February there was no steel placed at any abutment or pier?

A. I was there in the early part of the year when the steel was placed, because I went over, climbed over the pier and saw the steel in place.

Q. At which pier or abutment?

A. Abutment No. 1, south end.

Q. I will go back. Can you fix that date that you say you were there?

A. That has been a year and a half—been a couple of years or so since that happened, and I can't define that definitely without going through some of my correspondence and defining that.

Q. Then you do not know that no steel was placed at any pier or abutment until the latter part of March, 1940; you do not know that fact, do you?

A. Without looking it up in my records.

(Testimony of Edward L. Soule.)

Q. Now, going back to the date of the contract, January 6, 1940, between that date and the first time that you were up there, considerable steel arrived at Redding, didn't it? A. Yes, sir.

Q. The Soule Steel Company did not have anybody there, but [20] Union Paving Company took care of it, didn't they?

A. Two or three hundred tons that was moved in from Redding to the south abutment.

Q. Wasn't all the first steel that came into Redding handled by the Union Paving Company because you had no men or equipment on the job, and that was in January, 1940?

A. You had not given us the contract.

Q. What?

A. That was before the contract.

Q. On January 6, 1940—that is the date of the contract—isn't that the correct date?

A. That is correct.

Q. After January 6, 1940, wasn't there steel delivered at Redding and handled by the Union Paving Company, for which they were duly given credit later?

A. Mr. Stevens would be better qualified to testify on that. We assumed the contract on and after January 6th. We began on the contract after January 6th.

Q. Now, you fix your second visit up there at a time when Sparling was up there. Sparling was the Union Paving Company's man, wasn't he?

A. Mr. Sparling was a partner of Mr. Stevens.

(Testimony of Edward L. Soule.)

Q. He was not Union Paving's man?

A. No.

Q. He was Soule's man up there, I meant to say?

A. He was associated with Mr. Stevens.

Q. What work was going on at that time, which pier or piers?

A. I don't recall just exactly the piers.

Q. Did you go up to the Pit River job, itself, at that time?      A. Yes, sir.

Q. Were they working on the north side of the river or the south side, or both sides?

A. They were working on both sides.

Q. Can you tell us if they were working on abutments or on abutments and piers on the south side of the river? [21]

A. They were working on both the abutments and piers on the south side.

Q. And on the north side what were they doing?

A. My memory is a little hazy in connection with that particular time, but it seemed to me like it was away up to the north part. Our notes would show the sequence of that job, and my memory is that it was the north part—the north abutment, and the farthest part north of the job.

Q. Now, you fixed your third trip as being in the fall of 1940. Do you remember what piers they were working on at that time?

A. I have a long sheet, here, giving the numbers, or I could get from the specifications from

(Testimony of Edward L. Soule.)

the numbers, which would give me—I don't just remember those numbers right off-hand.

Q. I will reframe my question. With reference to Pier No. 3, which was the pier right on the river's bank, on the south side of the Pit River——

A. Yes, sir.

Q. Do you have that pier in mind?

A. Yes, sir.

Q. How far had that work progressed at that time on Pier No. 3?

The Court: That is the fall of the year.

Mr. Wrigley: The fall of 1940, yes, your Honor.

A. I climbed up—at the time I was there, I climbed up to about an elevation of, I would say, where these bars, vertical bars came down and these others came up in a slant, because I noted how the clamps were being placed, and Mr. Stevens and I walked all the way around the pier.

Mr. Wrigley: Q. Now, you referred to vertical bars. Were there any vertical bars in Pier No. 3 in place?

A. They were slightly inclined. We called them vertical bars.

Q. They are still sloping, but not as sloping as in the base?

A. The entire pier has a batter on it, but we distinguish between [22] the vertical bars and the flat horizontal bars.

Q. There were a considerable number of piers that had bars that were truly vertical, weren't there, straight up and down?

(Testimony of Edward L. Soule.)

A. Yes, there were some of them that had vertical bars.

Q. Pier No. 3 had no bars that were truly vertical, did it?

A. I think the dowels in the footings were vertical. A quick reference to the plans will show that point.

Q. Now, you fixed your fourth trip as a time when you were returning from another job. Can you be more specific as to the month and year?

A. I remember we went in Bonneville, and I distinctly remember this part. It seemed like we went in at a very hot time of the year, and when we were over there in Bonneville, and when we returned to the City of Spokane it was a very hot time of the year—I think it was in September, as near as I can remember, on account of the heat of the season.

Q. Of 1940? That would be before, then, the one you referred to as being the fall of 1940?

A. No, the other, the first one, was before the return from Bonneville.

Q. You think, then, that would be September of 1940?

A. This is quite a period back, and if it was important that these dates be fixed of a definite time, I could peruse some of our correspondence and find those dates.

Q. I am not so much interested in trying, Mr. Soule, to fix them in point of time, but I am trying to tie them into the progress of the work, what they



(Testimony of Edward L. Soule.)

were doing, and where they were working at the time you were there.

A. I would be glad to go through and determine those dates for you.

Q. No, I am not interested in the dates; I am interested in what you saw there and what they were doing at that time. On your [23] fourth trip, when you say you stopped off en route from the Bonneville Dam job, have you a picture of where the work was going on at that time?

A. Will you repeat that question, please?

(Question read)

A. I think those dates were pretty reasonably close together, as I remember it.

Q. Have you a picture of where they were working at the time that you say you were there the fourth time?      A. A picture in my mind?

Q. Yes; irrespective of the date, now, what piers were they working on?

A. The south—coming from the south end down toward the river, work had progressed quite reasonably well on that. Coming up from the north side down on the abutment, the farthestmost abutment on the north side, those were up pretty well, because Mr. Stevens and I discussed some of the placing in connection with that work, and we were up on top of one of the piers, and he was particularly anxious in pointing out to me how well a hoist was working.

Q. Was that one of the northerly smaller piers or one of the larger piers in the river?

(Testimony of Edward L. Soule.)

A. That was the piers away from the river, the smaller piers.

Q. Now, going back to the trip—because we seem to have those two trips, the third and the fourth trips pretty close together—one you say was in the fall of 1940 and the other you thought in September of 1940—how far had the work at that time progressed in pier 2? That is the second one from the river on the south side.

A. I don't exactly recall until I would look over some pictures at that time to find the progress of it.

Q. You do not know whether No. 2, then, was completed or not, as far as your present mental picture is concerned? [24]

A. My memory is that it was not quite completed.

Q. Coming to No. 3, which we divided into two parts, roughly, the base, which had the extreme sloping on the steel from the base on up to the top, where the steel was still sloping, the pier still sloping, but not so much as in the base, how far had the concrete been poured at the time that you were there, either in September or the fall of 1940, on Pier 3?

A. It had been poured, I would judge; there are two slants. There is one slant that comes up, and then the inclination is not so great. It was about up where there was—my memory of it is about the place where that inclination changes.

Q. That is, the concrete was poured about that far. How far was the steel up?

(Testimony of Edward L. Soule.)

A. The steel had to be up about the lapping distance above that, because they were welded, and in my case, looking up from the platform down onto the steel there, I should say 20 or 30 feet, because we were up on the platform and we looked down the distance of the pour of the concrete.

Q. How long were the steel bars that were then being used in Pier No. 3, those two-inch bars?

A. Somewhere around 58 or 60 feet. They varied. I think some of them went to 30 feet, 40 feet, 50 and 60—the usual length that was spliced on there was about 60 feet.

Q. The 60-foot, 2-inch steel bar, such as was used for reinforcing on those piers, weighed how much?

A. I will have to figure this a little bit. 2 times 2, square, four square inches, multiplied by 3.4 is 15.6 pounds per foot. 15 pounds—about 900 pounds a bar.

Q. A two-inch bar, then, if it is 60 feet long, weighs approximately 900 pounds?

A. It weighs 15.6 pounds per foot. Steel weighs 3.4 pounds per each square inch per lineal foot of length. [25]

Q. Now, you have in mind that there were on all those tower piers two rows of 2-inch bars substantially around the outer edge of each pier and a wooden framework built inside toward which those bars leaned?

A. Two and three rows. There are places where there are three rows.

(Testimony of Edward L. Soule.)

Q. Three rows was only down in the base, wasn't it?

A. Reference to the plan would show you where those are, but the three rows go up to quite a considerable distance, and then they start to go down to two rows.

Q. How were those steel bars held in place in the air?

A. They were inclined against the falsework or the supporting means put in position by the Union Paving Company. That was a part of their work that they had to——

Mr. Wrigley: I ask that that be stricken out as not responsive, "as part of their work." The meat of this case is that the Union Paving Company had certain work to do, according to their contention, and the Soule Steel Company agreed to do certain things according to our contention. That is the whole meat of this case. We ask that the conclusion as to whose work it was go out.

The Court: It may go out. That is within the Court's province.

Mr. Wrigley: Q. Can you tell me, with reference to the construction of what we will call the interior wooden work against which the 2-inch bars were leaned, if any of that——

Mr. Moore: Pardon me. There is no evidence that they were leaned against that.

Mr. Wrigley: I thought this witness so testified. Pardon me.

(Testimony of Edward L. Soule.)

Mr. Moore: I didn't understand it that way.

[26]

Mr. Wrigley: Will the reporter go back and read what the witness said, please, as to what the bars were leaned against?

(Record read.)

Mr. Wrigley: That is what I thought he said.

Mr. Moore: He didn't say "leaned"; he said inclined.

Mr. Wrigley: I will use your own word, inclined. Your counsel likes that.

Q. Showing you this picture, I will just ask you to look at it and see if any of that work was going on at any of the time when you were up there.

Mr. Moore: Pardon me. That is Pier 4?

Mr. Wrigley: Yes.

Mr. Moore: You mean similar work going on up there?

Mr. Wrigley: That type of work.

A. I was up there at the time that this type of work was going on.

Mr. Wrigley: Before I examine this witness further, I would ask that this picture be marked for identification for the record.

The Court: It may be marked.

(The photograph was marked "Defendants' Exhibit A for Identification.")

Mr. Moore: Outside of the date, Mr. Stevens, the superintendent on the job, said that is a fair

(Testimony of Edward L. Soule.)

representation. We have no objection to it, your Honor. The date will have to be fixed.

Mr. Wrigley: It is offered primarily, not for being the picture of Pier 4, but the type of work that was used on all that type of pier.

Mr. Moore: There is no objection then.

Mr. Wrigley: Q. Now, showing you again this picture, Mr. Soule, which is a picture of Pier 4, which is the last pier, [27] that, in a general way, depicts the type of structure on all the piers except those that were what we call vertical piers, which had the bars truly vertical. This is a picture of how the piers were built where they were slightly inclined?

A. You are throwing quite a general classification together. Abutments were of one type. There were piers that were solid and there were piers that had cores in them. The larger piers had cores in them. Pier 4 was the one that had the interior cores in them.

Q. Yes.

A. 2, 3, and 4 were of one classification; then there were the other solid piers, and then there were the abutments. So I think you would have to *same* that the form work differed on the different classifications of the piers.

Q. We will ask, first, in a general way, the form work on the abutments was substantially the same, was it not?

A. Abutment No. 1 was different from—that is,



(Testimony of Edward L. Soule.)

the south abutment was different from the north abutment.

Q. In what particular?

A. Abutment No. 1 had an archway where the train went in. The north abutment had no archway, according to my recollection.

Q. But except that the south abutment formed in part a tunnel for the railroad, the general structure as to the steel, the steel reinforcement, the vertical bars, cross bars and that were quite similar?

A. You might call them similar, if that is the type.

Q. Then taking the piers, you would divide those, roughly, into two types also, wouldn't you, those that you would say are more or less truly vertical and had not only vertical steel but had horizontal steel in them, and then piers such as 2, 3, and 4 that were sloping all the way to the top and which had the cores [28] in them?

A. Mr. Wrigley, I think that if you want a detailed description of the piers, reference to the plans should be made. Some of them had some big horizontal beams in them, there—you might call them bracing beams—that in a true description of the different piers we should take them piece by piece to have a true classification of them.

Q. Coming to my question that I was leading to, this depicts in a general way those piers that we would say had the slightly sloping steel in them, and cores, does it not?

(Testimony of Edward L. Soule.)

A. Piers 3 and 4 were similar and they had a base on them; then there was one inclination, and then that inclination became less as they went up. I count piers 3 and 4 very similar.

Q. They are the real deep piers on the river's edge on the south side?

A. Those are the tall piers on the job.

Q. In this picture, these upper numbers, where it is marked "Elevation 903," that illustrates your steel up there at the top, doesn't it?

A. These are what we call the perimeter steel in the piers which lapped at different elevations.

Q. All your steel was perimeter steel on all those jobs, was it not?

A. Not entirely. You had horizontal bars in the base of the piers.

Q. Piers of this type.

A. Then you had your cross walls around the cores, and they had horizontal bars around together with tie bars attached to them.

Q. Referring to your 2-inch reinforcing steel, was that placed in place on these sloping piers except around the perimeter of them?

A. Only around the perimeter.

Q. And that steel, weighing around 900 pounds, each bar would be inclined against wooden falsework?

A. It would be supported against the falsework used in the pouring by the Union Paving for [29] their core.

(Testimony of Edward L. Soule.)

The Court: Q. In what way were they supported?

A. The inclination—when you put a bar, your Honor, that is just off from a horizontal, the weight is very little. What we call in engineering terms a horizontal component, is very small.

Q. In your own way, just tell me how it contacts the wooden framework.

A. The Union Paving Company built a steel rail of 30 or 40 pounds in these verticals coming up, with 10-foot centers in each direction. They welded on a little angle lug to this vertical member, and then they put a ledger attached to each one, and then a framing built of 2-inch plank over the top of that, which the workmen used to run their buggies on, and from which they poured their concrete. On that, of course, there would have to be a certain amount of bracing, because you just can't have a spindle sticking up on that; it has to be cross-braced to take the weight of possibly wind or the action of the concrete buggies as they go over there, and over a big area, of course, that makes quite a stable structure. It is what we call quite a stable framing. So these bars coming up, just against this part, in the inclination up there, hasn't a large amount of horizontal component, as we call it. As soon as the concrete core is up in here, it takes vertically all the stress, because they then become embedded or fixed in that part, so that then that relieves some of the core. The further up that

(Testimony of Edward L. Soule.)

goes, the more embedment, of course, the more the fixedness or security in the concrete.

Mr. Wrigley: Q. Referring back again to a picture of this kind, was it possible to support that steel in place, there, the two rows around the outside of those piers, without inclining it against the wooden falsework inside?

A. Yes, sir. [30]

Q. How?

A. We had two different procedures in mind. Originally, when we figured the job, before the bids were let, we called in the chief engineer of the Pacific Gas & Electric Company, O. W. Peterson, and his assistant engineer, Capacommer. We designed for the first section a triangular piece—your Honor, I am a kind of engineer; I am used to drawing diagrams and so on—but this was a triangular piece with just the inclination that these parts took, and we had a piece coming down in here, and then we had what we called a small frame bent that we rested these against to get started. The minute we got started and the embedment of the concrete came up for a distance, we used what we called a jumbo in each of the diagonal corners.

The Court: Pardon me, Counsel.

(Discussion off the record.)

The Witness: These two jumbos in the diagonal corners had a boom on it, and when the radius came out opposite, they overlapped in the middle. This jumbo over here could be used to raise the other one

(Testimony of Edward L. Soule.)

coming up in certain bars here in the corner. We used these bars to carry our jumbos and to lift the steel up to have it placed in there, because with all these bars sticking up, and they lacked the different elevations, this was the solution and means that was devised by Mr. O. W. Peterson and his assistant engineer.

We also designed, after the bid meeting, to ascertain the comparative costs of the two methods, a complete steel tower all braced similar to what you find in one of these transmission towers. It would in all respects look just like a transmission tower, and then we lean the bars and have them supported on all the different sides.

We calculated the costs of the two methods and had those [31] available for our use.

Q. Were you ever on that job at any time when they were raising the steel on piers 2, 3, or 4 when they were, we will say, a hundred feet up in the air, or 75 feet up in the air?

A. Might I have reference to that plan? These elevations are a little bit confusing—so that I may answer his question most carefully.

Mr. Moore: What plan do you refer to?

The Witness: That white sheet I have, Mr. Moore.

Mr. Moore: The drawing, do you mean?

The Witness: Yes.

The Court: If you want to put it on that board——



(Testimony of Edward L. Soule.)

The Witness: I think I can put it right here for reference, if I may. This plan gives 25-foot intervals in elevation. Now, may I——

Mr. Wrigley: Q. Were you ever on this job at any point where they were placing steel, we will say, 100 feet above what we call the base on 2, 3, or 4?

A. Yes, sir.

Q. Then you saw how the steel was being placed?

A. Yes.

Q. By the Soule Steel Company?

A. Yes, sir.

Q. Is it your testimony that this steel did not lean very heavily against the inside framework?

A. Precisely it leans in comparison with the amount which is off the vertical, and is measured in terms of mechanics as to the weight of the bar in comparison with a component. That bar comes down there. We take a vertical in here, and the amount which represents the component across in here is the amount that it presses in a vertical direction. That is the law of mechanics.

Q. Forgetting the law of mechanics and coming to this job, at a point, we will say, 100 feet above the base, was it possible [32] for you to place the 2-inch reinforcing bars all the way across one side without at the same time placing the bars on the opposite side to counteract that weight?

A. I am going to answer your question in two ways for this reason: It is possible, yes. It is not the practical way to do it. You can make a bracing to place all of the bars at one side, if you so desire,



(Testimony of Edward L. Soule.)

which takes the load in transference through your framed action to the other side. That is done many times.

Q. On this job wasn't it absolutely necessary, not only to counterbrace all the 6 by 6 falsework with 2 by 6's, and, in addition, at the time you placed it on one side, almost immediately to place it on the other side to counterbalance that weight?

A. To what do you refer when you say by 6's?

Q. The 6 by 6 cross pieces that hold the 2 by 2 steel apart?

A. It would be the practical way to do it, Mr. Wrigley.

Q. Isn't that the thing that was done up there all the way? A. Yes, that is correct.

Q. After you left the base, wasn't that done all the way to the top on every one of the so-called sloping piers? A. I take it that it was, yes, sir.

Q. Now, you have stated that the upright rails on 10-foot centers—they were held apart by what you call 6 by 6 crosspieces of wood, weren't they?

A. I wouldn't believe they were 6 by 6's.

Q. Did you see any of them?

A. I should believe they would be about—a ledger wouldn't be in a square shape, because it wouldn't be economical to do it that way. They would be more in a 2 by 10 or 2 by 12.

Q. Did you see any of the interior falsework on any of the piers 2, 3, or 4? A. Yes, I did.

Q. Just, first, a general question before I have

(Testimony of Edward L. Soule.)

it marked [33] for identification. Were you ever on the job and saw any work of that kind going on?

A. I was more interested in our steel part, and I walked over this part, and it had planking on, and I didn't get down to examine that more in particular detail, because I wasn't particularly interested in that part.

Mr. Wrigley: Before I examine further, I ask that this picture be marked next in order for identification.

(The photograph was marked "Defendants' Exhibit B For Identification.")

Mr. Wrigley: Q. Showing you, Mr. Soule, this picture which has been marked Defendants' B For Identification, and pointing out first what we call the girder running from the steel work to the steel work across at various distances in both directions, that was all 6 by 6, wasn't it?

A. I didn't examine it; to my knowledge, I do not positively know.

Q. Now, those 6 by 6's in the two directions were held by braces, 2 by 6 braces, or do you know?

A. From the dimension here to the dimension there, that would look like about a 2 by 6.

Q. Now, tying in from the ends of what I have referred to as 6 by 6's to this wooden bar along the steel work, that is what we call a template——

A. That is correct.

Q. Between the steel bars, there being two rows, you will remember, all the way around, these larger bars, there is what we call a spacer?

(Testimony of Edward L. Soule.)

A. Correct.

The Court: There is one difficulty about it. You are familiar with this matter and I am not, and you are examining this witness.

Mr. Wrigley: I am frank to say that is correct, and I am not only familiar in the sense of studying it, but also seeing it, personally, on the job. [34]

The Court: Since I finally have to determine this matter, it is well to familiarize me with it so that I may follow the testimony.

(Discussion off the record.)

The Court: We will take an adjournment until two o'clock.

(A recess was here taken until 2:00 o'clock p. m.) [34a]

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Afternoon Session  
2:00 O'Clock P. M.

Mr. Moore: I have this model, your Honor. We might explain it to your Honor if your Honor cares to.

The Court: I don't believe so. Proceed.

EDWARD L. SOULE,  
recalled;

Cross-Examination (continued)

Mr. Wrigley: Will the Reporter just read the last couple of questions and answers, please, so I can see just exactly where we left off?

(Record read.)

(Testimony of Edward L. Soule.)

Mr. Wrigley: Q. Now, Mr. Soule, since you were on the stand this morning have you examined your memorandum or diary to verify the dates that you were up there? A. No, I have not.

Q. On any occasion when you were there after January 6, 1940, did you have any conference or conversations with Mr. Dowling at any time on the job?

A. Yes, I had conversations with Mr. Dowling on the job.

Q. Which trip was that after January 6, 1940, that being the date of the contract?

A. I always made a point to look up Mr. Dowling when I was up there on the job to find if he was there. I have no particular refreshment of mind to know more than I would generally ask him how was everything going on the job.

Q. Have you any recollection of ever having seen him on that job after the date of the subcontract?

A. Yes, I think that I saw him at least once that I recall——

Q. Where?

A. ——I remember the blacksmith shop was set up and I remember of having gone by that blacksmith shop and meeting him down at one of the piers. [35]

Q. Was that the second, third, or fourth trip?

A. I couldn't recall, until I would look over the correspondence as to that.

Q. Who was present at the time you met him on the job there? A. What was that question?

(Testimony of Edward L. Soule.)

Q. Who was present besides Mr. Dowling?

A. I was there with Stevens.

Q. You were there with Mr. Stevens at that time?

A. Yes, I was with Earl Stevens.

Q. Who was with Mr. Dowling, if anybody?

A. I have no special recollection until I would refresh my mind by some incident.

Q. Do you know Mr. Hunt, who sits at the end of the table?

A. Yes.

Q. Connected with the Union Paving Company?

A. That is correct.

Q. Did you ever meet him on that job at any time?

A. I saw Mr. Hunt in the office. He had charge of the engineering.

Q. Did you have any special conversation with him, that you remember?

A. We took up with Mr. Hunt relative to an agreement we had about the pouring of the seals in the bottom of the footings, as I recollect, on the job.

Q. The footings or seals of any particular pier, or just generally?

A. No, that was a general item, because we wanted to know about how we were going to hold those bars, and I generally wanted to know how the progress of the piers was contemplated. That would lead us to know what man power to put on the work.

Q. Showing you a carbon copy of what purports to be a letter from Union Paving Company to Soule Steel, do you remember the receipt of the original of that letter?

(Testimony of Edward L. Soule.)

A. I don't particularly remember the receipt of this letter, and it might be that our mail is being opened and this would apply to the accounting department, and it would go direct to those in the accounting [36] department. This was regular standard form on all government work. We supplied payrolls to those in charge of the government, so this would be sort of a routine matter.

Mr. Wrigley: This first letter I would like to ask that it be marked for identification—I will read it—it starts a conversation or correspondence, subject to their verifying that they have the original.

“January 8, 1940

“Soule Steel Company,  
1750 Army Street  
San Francisco, California.

Re: Pit River Bridge—Piers & Abutments—  
Contract No. 12r-10788.

“Gentlemen:

“We enclose herewith a copy of a letter received from the Acting Construction Engineer of the Bureau of Reclamation, U. S. Department of The Interior regarding weekly payrolls and also a sample copy of the affidavit required, in connection with your sub-contract on the above project.

“Kindly arrange to comply with these instructions and if any further information is required please advise.

“Yours very truly,

“UNION PAVING CO.

“By L.”



(Testimony of Edward L. Soule.)

I merely ask that this be marked for identification at this time.

(The document was marked "Defendants' C For Identification.")

Mr. Wrigley: Q. Showing you what appears to be a letter of the Soule Steel Company——

A. I remember this letter.

Q. And that is your signature?

A. That is correct.

Mr. Wrigley: We offer this as our next exhibit in order.

(The document was marked "Defendants' Exhibit D" in evidence.) [37]

Mr. Wrigley: This letter is on the letterhead of Soule Steel Company, addressed to Mr. Joe Dowling, c/o Union Paving Co., Babcock Building, San Francisco, under date of January 8, 1940:

"Dear Joe:

Subject: Pit River Bridge

"Had some conversation with Mr. Woolridge of Columbia Steel Company today and he expressed a desire that you write him a letter stating that you have sublet the installation of the reinforcing steel on the above job to us.

"This will facilitate our relationship with them to the end that we will get the information at the earliest possible time.

"Sincerely yours,

"SOULE STEEL COMPANY,

"By Edw. L. Soule."

(Testimony of Edward L. Soule.)

Q. Showing you what purports to be a letter of January 12, 1940, on the letterhead of the Soule Steel Company, that is your signature at the bottom, isn't it?      A. That is correct.

Mr. Wrigley: We offer this as Defendants' Exhibit next in order and ask that it be marked.

(The document was received in evidence and marked "Defendants' Exhibit E.")

Mr. Wrigley: This is a carbon copy of a letter on the letterhead of the Soule Steel Company, dated January 12, 1940:

"Mr. Ralph Lowry,  
Construction Engineer  
U. S. Department of the Interior  
Bureau of Reclamation  
Redding, California

Re: Abutments and Piers, Pit River Bridge.

Dear Sir:

"In accordance with the advice given you in Union Paving Company's letter of January 8th, 1940, we have contracted to do the placing of the reinforcing bars in the [38] above mentioned project.

"We are desirous of receiving promptly three copies of the blueprints in the larger scale of all of the piers that you have available at the present time. We also desire three lists of the cutting and placement lists.

"We shall thank you to have these delivered to

(Testimony of Edward L. Soule.)

Mr. Hunt of the Union Paving Company at the job-site or it may be more convenient, if satisfactory to you, that these be sent to us direct.

“Sincerely yours,

“By Edw. L. Soule.”

And a carbon copy of Union Paving Company, San Francisco, which is this copy.

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Q. Showing you next, Mr. Soule, what purports to be a carbon copy of a letter dated January 16, 1940, can you identify that as your signature at the bottom?

A. That is a letter which I dictated and sent to them.

Mr. Wrigley: This letter is on the letterhead of the Soule Steel Company:

“Mr. A. J. Guy, Purchasing Agent  
Bureau of Reclamation  
Redding, California

Re: Abutments and Piers, Pit River Bridge

“Dear Sir:

As you probably know, we have subcontracted for the work for placing the reinforcing steel for the above job from the Union Paving Company. At present we have a list *of the* reinforcing steel which has been purchased from the Columbia Steel applying to this job. May we please request that you send us at the earliest possible time the releases on

(Testimony of Edward L. Soule.)

all of the other material, [39] telling us the number of bars, sizes and lengths, carloads in which the material was shipped, what source, and the weight of the material.

“As we now understand it, some of the material has been shipped by Pacific States Steel Corporation and by Colorado Fuel & Iron Company.

“Will you also give us advance notice when you expect to release any shipments of material. We hope that an arrangement will be so worked out whereby we will, through the Union Paving Company, be able to project our requirements ahead and not have releases come except at a certain time before the material is needed for the construction of the work.

“If you have made any releases for further material other than the reinforcing already at Redding and jobsite, we shall indeed be glad to have you notify us of these releases.

“Sincerely yours,

“SOULE STEEL COMPANY,

“By Edw. L. Soule.”

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We offer this as our exhibit next in order.

(The document was received in evidence and marked “Defendants’ Exhibit F.”)

Mr. Wrigley: Q. These letters are, to the best of your belief, correctly dated? A. Yes, sir.

(Testimony of Edward L. Soule.)

Q. Now, Mr. Soule, your counsel has been asked to produce a letter of February 5, 1940, to J. K. Welding Company, and he does not seem to have it *in his* file, and I do not seem to have a copy of it, either, but it may be when I give you the substance of it you may recall such a letter; on February 5, 1940 you wrote a letter to J. K. Welding Company, notifying them, among [40] other things, that a suitable frame was necessary to hold up the steel bars being put in by the Soule Steel Company. Do you remember such a letter?

A. A letter of February 5th addressed to——

Q. J. K. Welding Company.

A. J. K. Welding Company—I do not recall such a letter at the moment. I turned all my files over to Mr. Moore.

Mr. Wrigley: Mr. Moire said he will go through his records and see if he can find it.

Mr. Moore: I might say I looked for it at noon-time and was not able to locate it. I found a letter of March 5th.

Mr. Wrigley: That is another matter.

Q. I am showing you, Mr. Soule, a carbon copy of a letter on my letterhead dated October 28, 1940, addressed Soule Steel Company, signed Union Paving Company by A. Lawton, and down in the lower corner, receipt by, apparently, Mr. Stoddard, of your office. Do you remember that letter?

A. Whether I happened to be out of town on October 28, 1940 I do not know. This is Mr. Stoddard's

(Testimony of Edward L. Soule.)

writing, and that is sufficient evidence that we received the letter.

Mr. Wrigley: We offer this as Defendants' Exhibit next in order, not to prove the facts therein stated, but merely as showing that at that time we were making certain claims and contentions.

Mr. Moore: I am going to object to it for two reasons: No foundation has been laid. It is a letter taken out of the clear. No dispute was going on at that time. I think the letter is a part of the general picture and there has to be a foundation of the circumstances under which it was written.

Also it claims lack of due diligence in the matter, which is [41] not germane to any of the allegations of the complaint and answer. If it is germane to anything, it is to the cross-complaint, and there is no allegation in the cross-complaint that this letter directly pertains to. In other words, Mr. Wrigley is now stepping over into his cross-complaint, your Honor, rather than the complaint and answer. I take it he has to affirmatively prove his cross-complaint, and this letter has to do with that situation, and has nothing to do with either the complaint or answer.

Mr. Wrigley: That is not correct, your Honor. That is not the intention of the offer of proof. This letter is intended as fixing a date and showing at that very time when this letter was written we were having a disagreement over who was responsible for this interior falsework. They were not going ahead



(Testimony of Edward L. Soule.)

because it wasn't their duty to do it. They said the Union Paving Company had to do it, and the Union Paving Company said they had to do it.

Mr. Moore: Just a minute. That is what I objected to. Mr. Wrigley is putting himself in the position of a witness and testifying to the circumstances under which this was written, and that is exactly my point, your Honor. There is no foundation laid for the introduction of this letter at this time. At the proper place there will be no objection made to it; but he is taking a letter not having to do with the time of the contract, a letter written ten months later—eleven months pretty near—October 28, 1940—and offers it when he has not connected it up in any manner, and, as I say, there is no argument that there was a dispute at that time on that point, but that is a matter of their cross-complaint, not in rebuttal to our affirmative case.

The Court: I will sustain the objection at this time. [42]

Mr. Wrigley: Before the Court sustains the objection, I just want to make a statement of my theory on this letter. Their theory is that they earned \$22.50 a ton by doing certain work. Our theory is they did not earn \$22.50 a ton because they did not do the work contracted for, but did a lesser work, and this letter is offered to show that we were complaining at that time that they were not doing certain work that they were required to do.

The Court: I sustain the objection at this time. You may renew our offer at the proper time.

(Testimony of Edward L. Soule.)

Mr. Wrigley: May I ask at this time that this be marked for identification?

The Court: It may be admitted and marked for identification.

(The document was marked "Defendants' Exhibit G For Identification.")

Mr. Wrigley: Mr. Moore, have you a letter dated November 8, 1940, from the Union Paving Company to Soule Steel Company? My copy has a lot of pencil marks no it.

Mr. Moore: Yes, I have seen that. Go ahead and use it. I have it, I know, some place.

Mr. Wrigley: There are a lot of pencil notes that are on this copy that were not on the original.

Mr. Moore: Yes, they were not on there.

Mr. Wrigley: Q. Mr. Soule, showing you a carbon copy of a letter, presumably dated November 8, 1940, addressed to Soule Steel Company, from Union Paving Company, disregarding the pencil notes that are there, was such letter received by the Soule Steel Company—when I say "such letter," I refer to the original of that letter?

A. I believe that this letter was received. It seems to me like I remember it. [43]

Mr. Moore: I am going to make exactly the same objection. It is a letter going along exactly the same lines, and goes to the dispute, your Honor. It is part of the same thing. The situation existed and developed back in October and November. It is part of their counter-claim.

(Testimony of Edward L. Soule.)

Mr. Wrigley: I think the Court ought to know the contents of this letter and know the purpose for which it is offered before it goes on. You are not making any objection that this is not the original?

Mr. Moore: No, I am making no objection on that ground.

Mr. Wrigley: Letter dated November 8, 1940.

“Soule Steel Co.

1750 Army Street

San Francisco, California

“Gentlemen:

“Concerning your various charges for placing reinforcing steel on the Pit River piers and abutments.

“We have many counter claims against your company which we are desirous of adjusting as *soon as* possible and before settling your account. To this end we would appreciate an engagement for a meeting with someone in authority from your company, Mr. Stevens and ourselves.

“Awaiting your pleasure in the matter, we are,

“Yours very truly,

“UNION PAVING CO.

“By J. W. Desmond.”

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Now, the purpose of this offer is to prove that in 1940, as of this time, there was a disagreement, and our people were then making counter charges against them for installing this interior falsework.

(Testimony of Edward L. Soule.)

The Court: Counsel admits that, but the objection is the [44] proper foundation has not been laid here, and this has to do with your cross complaint and has to do with the order of proof, and I will sustain the objection on the same grounds that I did the other letter at this time.

Mr. Wrigley: The offer was made on the same theory, namely, that they did not earn \$22.50 because they did not earn \$22.50 a ton.

The Court: You will have an opportunity to make the offer at the proper time.

Mr. Wrigley: We would then ask at this time the letter, without the pencil notes, be marked for identification.

The Court: It may be marked.

(The document was marked "Defendants' Exhibit H For Identification.")

Mr. Wrigley: Q. I am showing you, Mr. Soule, the original of the letter written by me to the Union Paving Company, which has a notation on it, "Carbon copy, Soule Steel Company." Did the Soule Steel Company receive that carbon copy of that letter?

A. This letter stipulates that you talked to Mr. Stoddard and then——

Mr. Wrigley: The question is——

The Court: Just a moment. Keep in mind the question. The reporter will read the question.

(Question read.)

(Testimony of Edward L. Soule.)

A. I think that is a matter of fact in searching our files. I can't answer.

Mr. Moore: I will stipulate that I have a copy of that letter. It was turned over to me either out of Mr. Thelen's or Mr. Soule's file.

Mr. Wrigley: Mr. Thelen had it. [45]

Mr. Moore: Probably Mr. Thelen's file. I know I have read it.

Mr. Wrigley: Q. Mr. Soule, did you read this letter through?

A. Not entirely. I will be glad to do that. (After reading:) What was your question, Mr. Wrigley?

Q. The question was, have you read this letter through? A. Yes.

Q. Did you notice the date on this letter, April 12, 1941? A. Yes, sir.

Q. At that time and prior thereto it is a fact that there was a difference of opinion between the Soule Steel Company, on the one hand, and the Union Paving Company on the other, as to the interior falsework, is that correct?

Mr. Moore: I think the question is improper—difference of opinion. I said there was a dispute. I think it calls for a conclusion. Counsel is attempting to go into their cross-complaint, your Honor, and asking for facts that have nothing to do with this phase of the case.

The Court: He has admitted that there was a dispute at that time.

(Testimony of Edward L. Soule.)

Mr. Wrigley: And that Union Paving Company, throughout this entire period, was contending that the Soule Steel Company was obliged to put in that interior falsework?

Mr. Moore: No, I am not going to make a *staiputation* as to that, because that is a matter of proof.

Mr. Wrigley: No, that they were not contending that.

Mr. Moore: You say this entire period. Your Honor, that would mean making a stipulation going into a great many *ramifacations*. It is a matter of the cross-complaint. I am not going to object to your proving your cross-complaint, but I do [46] object to it at this time because it is an improper order of proof.

Mr. Wrigley: Your Honor, it is not offered on the cross-complaint, at all. It is offered as our defense that they have not yet and never did at any time do the work entitling them to the \$22.50 a ton they are suing for. In other words, it is our answer to their complaint.

The Court: The form of your question is general. You asked was there a misunderstanding, or something, or was there a discussion. Counsel answered it by saying there was a dispute at that time, and that is what you expected to prove, isn't it?

Mr. Wrigley: And to further proof—which he does not want to stipulate to,—that Union Paving Company was contending that Soule Steel Company was supposed to do that work or pay the cost.



(Testimony of Edward L. Soule.)

The Court: He answered that by saying you have to present your proof.

Mr. Wrigley: And that is the question I asked this witness, if that is not the fact.

The Court: That what is the fact?

Mr. Wrigley: That Union Paving Company, at that time—we will say starting with October, 1940 up to the date of these letters—was not contending that Soule Steel Company had to put in that false work or pay for it.

The Court: He answered that by saying it is too general.

Mr. Moore: I answer further, your Honor, by saying the further situation is we have proven by the Government records that this amount of steel was put in. Now, if they have a cross-complaint that they did work that we claim they should have done, [47] that is a matter of cross-complaint and a matter of proving it.

The Court: That is the order of proof, there is no doubt about that.

Mr. Wrigley: It is not offered on our cross-complaint. It is offered on our denial that they have earned \$22.50 a ton. We deny that they earned \$22.50 a ton or that they have done the work.

The Court: Proceed with your proof.

Mr. Wrigley: Q. Mr. Soule, at any time after April 6, 1940 did you, personally, have any discussion with any representative of the Union Paving Company with reference to the interior false work?

A. After April 6th—

(Testimony of Edward L. Soule.)

Q. After January 6th.

A. Oh, January 6th. I thought you said April 6th.

The Court: January 6, 1940.

Mr. Wrigley: Q. When they made the contract.

A. Yes.

Q. With whom did you have a discussion?

A. Mr. Dowling.

Q. Tell us the place where that discussion took place.

A. I was in the East during the time an accident occurred when the Union Paving Company was moving up——

Q. The question was, fix the date.

The Court: Q. Can you fix the date approximately?

A. I think it was November 15, 1940, but that is a matter of definite record, Mr. Moore, at the time the accident occurred and a man was killed.

Mr. Moore: Maybe we can stipulate it was October 15th, wasn't it?

The Witness: October 15th. That was the time the contention began and the Union Paving Company then said we had the obligation of building the interior or the cost of that interior [48] falsework, and it wasn't until that time that that question came up.

Mr. Wrigley: Q. Now, you are speaking for yourself, personally, when you say it did not come up before then, aren't you?

(Testimony of Edward L. Soule.)

A. I had never heard anything about it.

Q. Now, continuously from that time on, isn't it a fact that Union Paving Company claimed that Soule Steel Company, under its *contract*, was obliged to put in that interior falsework, or pay for it?

A. I believe that was the scheme of things.

Q. And isn't it a fact also that they refused to pay your bills that you billed them, because of their claim against Soule Steel Company for this interior falsework?

Mr. Moore: I think that is an objectionable question, calling for the conclusion of the witness, your Honor.

The Court: Read the question, Mr. Reporter.

Mr. Moore: We will stipulate you would not pay the money.

Mr. Wrigley: Because——

Mr. Moore: The letters and all the rest—there was a dispute going on, and they would not pay the money. They claimed it was Soule's obligation to build the framework, and we will stipulate Soule just as vigorously contended it was their obligation and they held up the money and they haven't paid it yet.

Mr. Wrigley: I think that would be a correct statement, that they billed and claimed they had the money coming, and we claimed they hadn't earned it yet.

The Court: There is no dispute about that. That is the reason we are here.

(Testimony of Edward L. Soule.)

Mr. Wrigley: That is why we are here.

Q. Showing you, Mr. Soule, a carbon copy of a statement gotten [49] up by Union Paving Company, which purports to be their various charges that they make against the Soule Steel Company, have you seen that statement? A. Yes, I have.

Q. Without going into the correctness of the figures, Mr. Soule, and referring now to Pier 1, did Soule Steel Company pay the cost of the labor for installing the interior falsework?

Mr. Moore: I am going to object to that, your Honor, as improper order of proof, coming back to their cross-complaint, attempting to prove as——

Mr. Wrigley: It is not the cross-complaint.

Mr. Moore: It is the cross-complaint.

Mr. Wrigley: It is our answer to your complaint.

Mr. Moore: You do not allege anything in your answer that you can point to that justifies this. You have a cross-complaint for the exact amount you have owing you: \$61,112.62, and this is a bill rendered, and it has to do with the cross-complaint on which they are suing. We agree there was a dispute.

Mr. Wrigley: May it please your Honor, in their complaint they allege that:

“That between January 6, 1940 and May 31, 1941, plaintiff, acting under and in accordance with the terms and provisions of said subcontract of January 6, 1940, furnished and supplied all of said labor, materials, tools and equipment and performed all

(Testimony of Edward L. Soule.)

of said services to and for said Union Paving Co., all of which were necessary for and were actually used in the prosecution of the work provided for in said contract of November 4, 1939, and that Union Paving Co. contracted and agreed to pay to plaintiff for the same the sum of \$124,393.13; that, at the special instance and request of said Union Paving Co. [50] plaintiff sold and delivered certain additional goods, wares and merchandise and performed certain additional services to and for said Union Paving Co., all of which were necessary for and were actually used in the prosecution of the work provided for in said contract of November 4, 1939, having the reasonable value of \$671.84 and that said Union Paving Co. promised and agreed to pay said sum to plaintiff for the same; that on May 31, 1941, plaintiff furnished the last of said labor, materials, tools and equipment and performed the last of said services hereinbefore in this paragraph referred to; and that plaintiff has fully performed all the terms and conditions of said subcontract by it to be performed."

Now, in our answer we admit the extras in the amount of \$671.84. We deny specifically their allegation that they did \$124,393.13 worth of work, and we deny specifically that they fully performed all the terms and conditions of said subcontract. Now, that is our denial to their complaint, and we submit that our evidence is directed solely to that denial, to show that they never performed the work nor paid for the work entitling them to that \$124,000, the issue raised by the complaint.



(Testimony of Edward L. Soule.)

Mr. Moore: Their answer, your Honor, contains a general denial, but they admit that Soule furnished and supplied certain of said labor, materials, tools and equipment. Soule alleges that they supplied all, they admit they supplied certain things. We say the value of that is \$63,000, and then they deny generally the other facts. In the federal practice, under the rules of the District Court, direct and unequivocal answers are required. In the case of *Jones v. Doble Company*, 162 Cal. 497, where the plaintiff sold the defendant certain structural steel, and so [51] forth, in accordance with certain specifications, and alleged in the complaint that they had delivered all of the materials agreed upon, and the answer denied that they had delivered all of the materials agreed upon, the court said:

“This is an insufficient denial and is equivalent to an admission that substantially all were delivered. The omission of a single rivet or bolt would satisfy the denial.”

In *Bosch v. Bohlig*, 173 Cal. 687, which was an action to foreclose a mechanic's lien, the complaint alleged that the plaintiff had duly completed and performed all the terms and conditions of the contract. The defendant denied that he had performed all the conditions of the contract, and the court said at page 690:

“The attempted denial that plaintiffs had duly kept and performed all the terms and conditions of their agreement was utterly insufficient. It amounted to an admission that substantially all of



(Testimony of Edward L. Soule.)

the terms and conditions of the contract had been duly met and executed."

Now, that is the only denial that is in the complaint.

We have alleged in the complaint the contract at \$22.50 a ton. We have proven the total amount of steel. That cannot be controverted and cannot be questioned. They say we should have performed under their interpretation of the contract certain work that they performed; therefore, they are back-charging for it. So they filed a cross-complaint in the action, in which cross-complaint, after quoting from the contracts and the specifications 66, they alleged:

"That Cross-defendant, Soule Steel Company, did not prosecute the work under said subcontract diligently and [52] to completion as in said subcontract provided, and said cross-defendant failed, refused and neglected to do all work necessary and incident to the placing of said reinforcement bars, and in particular Soule Steel Company failed, refused and neglected to provide the necessary temporary supports and supporting devices, and cross-plaintiff was required to and did provide and supply the said temporary supports and supporting devices; and that the reasonable cost of providing and supplying the said temporary supports and supporting devices was the sum of \$58,835.22."

The cross-complaint also contains two other sets of items which have to do with the interpretation of the contract, which, added together, come exactly to the same amount that is in this bill of

(Testimony of Edward L. Soule.)

\$61,112.62, which is the amount of their cross-complaint.

I say, your Honor, that this testimony is not germane in any sense to the complaint and answer. It is germane solely to the cross-complaint, of which they have the burden of proof to prove, that we failed and neglected to do that work and to prove the items, and to attempt to prove it at this time is in no sense rebuttal to the plaintiff's case. It is entirely a matter of the cross-complaint. There is no proper foundation and it is out of order in the matter of proof.

Mr. Wrigley: If it please your Honor, first with reference to the two cases he cites, they go to the old basic rule, the negative pregnant; in other words, we allege that I owe \$100 and I deny I owe \$100. That is an admission that I owe \$99.99. But that is not our answer in this case. We allege they owe \$124,000. We admit they did certain work, and that they earned \$63,000. We deny specifically the balance. There is no negative pregnant there. In other words, a specific [53] denial.

The Court: I was going to ask you if it isn't a matter of order of proof; since both sides will have a full opportunity to present their proof, I think the objection at this time is a good one.

Mr. Wrigley: So the record will be clear and we will not be faced with the situation that we should have offered it on our denial to their complaint, I offer to prove at this time by this witness that as to Piers 1, 2, 3, 4, 5, and 6 and abutment 1, that they never paid for any of the labor used to install

(Testimony of Edward L. Soule.)

the interior falsework. They never paid any of the insurance on that labor. They did not pay for any of the equipment that was used on that installation. They did not pay for any of the lumber that was used. They did not pay for any of the steel that was used. They didn't pay for any of the oxyacetylene welding or the rods used on that interior; that they did not pay for any of the bolts and nuts used in connection with that interior falsework. Keep in mind we are not making any claim for exterior falsework to hold the concrete, this is interior falsework to hold up the steel, and we offer to prove, as shown by our answer, that they did not offer to pay for any of those things.

Mr. Moore: We take the position, as stated before, your Honor, the contract was on the basis of \$22.50 a ton to install so much steel, and that is the amount due us. They claim in the counterclaim we owe them money for work they did for us and therefore that is not a proper defense to our complaint.

The Court: At this time I will sustain the objection. I will let the record also show that you will have a full opportunity to present your proof. It is a matter that has to do with [54] the order of proof.

Mr. Wrigley: Q. Mr. Soule, reading from paragraph 24 of the specifications of the contract between the United States Government and Union Paving Company:

“Materials to be furnished by the contractor—  
The contractor will be required to furnish all form

(Testimony of Edward L. Soule.)

materials, including oil for oiling forms; all wire, wire tiles; or other appliances used for holding forms and for securing reinforcement bars; metal or other temporary supports, if used, for reinforcement bars and other metalwork; welding rods for welding reinforcement bars; all backfill materials; all gravel and broken rock or boulders for dry-rock paving; gravel or broken rock for drain pockets; all water used for mixing, cleaning, curing, and cooling concrete and mortar and for moistening backfill materials to be compacted; and also all other materials not a part of the completed construction work required for the completion of the contract. The contractor will be required to haul all of these materials as well as all of the materials delivered to the contractor by the Government. The cost of hauling all of the materials described above and of furnishing all of the materials required to be furnished by the contractor shall be included in the unit prices bid in the schedule for the work for which the materials and hauling are required."

Q. Asking you first, you are familiar in a general way and have seen the specifications and drawings referring to these various piers and abutments on the Pit River job?

A. Yes, I have seen the plans and specifications.

Q. Now, was there any provision made in the drawings or the specifications as to how any of this interior falsework was to [55] be constructed?

A. No, there was no provision.

Q. Speaking specifically with reference to the—they have been referred to as the steel rail up—

(Testimony of Edward L. Soule.)

rights on 10-foot centers—is there any provision for those in the specifications as issued by the Government?       A. To my knowledge, no.

Q. Other than as they might have been used by Union Paving Company, or by some other contractor in the finished product, in contracting the finished product? They were not called for, to your knowledge?

A. No, they were not called for.

Q. Did Soule Steel Company furnish the 6 by 6 girders tying those rails into each other, against which the 2-inch reinforcing bars were inclined?

A. We did not furnish them.

Q. Did you furnish the 2 by 6 wooden angular braces that were used to brace the inside falsework?

A. No, sir.

Q. Going back to your former statement, that you did not have the dates, you have a memorandum, have you, that fixes the dates that you were up at the Pit River job, the specific dates?

A. I could search through the file, I think, and fix those dates.

Q. Didn't you keep a dairy memorandum or a diary of your movements?

A. A young lady at the telephone kept track of all my telephones, and in many instances she stated as to where I was.

Q. I would ask that you check those dates for further examination on that question tomorrow, and then your counsel is going to look further for the letter of February 5, 1940 to J. K. Welding Company.       That is all.



(Testimony of Edward L. Soule.)

Mr. Moore: I have no further questions.

The Court: Step down.

Mr. Moore: That is the plaintiff's affirmative case, your Honor. [56]

Mr. Wrigley: Does your Honor want to go on now, or shall we take a few minutes' recess?

The Court: We will take a brief recess.

Mr. Wrigley: Mr. Hunt.

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### LOREN HUNT

called as witness for defendants; sworn.

The Clerk: Q. Will you state your name?

A. Loren Hunt.

### Direct Examination

Mr. Wrigley: Q. Mr. Hunt, what is your business or occupation?

A. I am a graduate engineer of the University of California.

Q. Graduate in what year? A. 1932.

Q. Since 1932, when you graduated, you have been following what lines of work?

A. Construction.

Q. Give us principally the various types of construction work that you were on prior to the Pit River job.

A. I was on the Bay Bridge for the State of California; I was connected with the Joint Highway District No. 13, and the construction of the Broadway Low Level Tunnel.



(Testimony of Loren Hunt.)

The Court: It seems to me I heard something about that.

Mr. Moore: I may say, your Honor, I recall having tried a case that lasted over five weeks involving that.

A. And then after that I went to the Bureau of Docks and Yards, Navy.

Mr. Wrigley: Q. At Mare Island?

A. At Mare Island, and the Naval Air Station at Alameda.

Q. What year did you first work for the Union Paving Company? A. 1939. [57]

Q. On what job?

A. I was working in the San Francisco office estimating.

Q. In connection with any particular job?

A. Well, we figured a couple of state jobs, and then succeeded in getting the Pit River Bridge, and then I was connected with that.

Q. You were connected with the Pit River pier jobs beginning when?

A. Well, I went up there in November, 1939.

Q. And you were there until approximately what date?

A. I left in July, 1941, and then I returned in November, 1941 and stayed there approximately two months, and cleaned up and moved out.

Q. What were your duties on the job?

A. I was in charge of the office, timekeepers, cost accountant, and did the purchasing, ordered

(Testimony of Loren Hunt.)

the miscellaneous supplies, and in general acted as office engineer.

Q. Did your duties there also take you out on a job where the piers and abutments were being constructed? A. Yes, sir.

Q. Were you, personally, in contact with the work of construction of the abutments and the various piers?

A. Will you repeat that, please?

(Question read.)

A. Yes.

Q. Every day? A. Yes.

Q. You saw, then, the work that was going on, and who was doing it? A. Yes.

Q. Did you keep all the records on the payroll of the men and what they did?

A. I supervised that, yes.

Q. And the purchase of materials of any kind; did you keep the records of those also, there?

A. Yes, I supervised that work.

Q. When I refer to materials, being specific, the lumber that was used there, and what it was used for? A. That is right. [58]

Q. The so-called iron rails that were used there, and you saw what they were used for?

A. That is right.

Q. And the clamps and the braces—you kept records of that— and the bolts?

A. That is right.

Q. How often were the records of the men's time turned in to you? A. Daily.

(Testimony of Loren Hunt.)

Q. Did you have occasion to check any of those to see if they were correct? In other words, if it was reported I was doing certain work, would you know that, or would you just take somebody else's word for it?

A. Well, you would have to take somebody's word for it, but if you were in doubt you could check.

Q. Did you keep a record of where the different types of material on that job were being used, and what they were being used for? A. Yes.

Q. Showing you, for example, what has been marked as Defendants' Exhibit A For Identification, can you tell us what that depicts, which pier?

A. Pier 4.

Q. Now, looking at this picture, you notice a lot of lumber showing outside, for two purposes: One is staging apparently for the welders, and the other is forms to hold the concrete, and also by looking closely you would identify the inside false-work or form work. Did you keep a record of the lumber that was used inside separate from the record of what was used outside?

A. I would like to qualify that.

The Court: Answer in your own way.

A. Yes, I kept track of the material that went inside the pier and outside.

Q. As a matter of fact, the lumber and timbers that were used inside were an entirely different size of lumber and timber than were used outside, weren't they?

(Testimony of Loren Hunt.)

Mr. Wrigley: Q. Now, from what is referred to as the daily time sheets, this would be transposed to what?

A. A daily summary that summarizes the operation.

Q. And your daily summary——

Mr. Moore: Might we have those marked in some way, they now having been identified?

Mr. Wrigley: I think that would be well to have them marked. I wasn't going to introduce the whole book in evidence, because they are just illustrative.

The Court: Use as much as you want to identify them for the purpose of the record, the daily reports, whatever they are.

The Witness: Those are the daily time sheets.

[61]

Mr. Wrigley: Q. Covering what period of time?

A. Covering the period of time from 9/4/40 to May 20, 1941.

Q. And from these daily time sheets what name did you have to give to these? What did you call these? A. Those are the pick-up sheets.

Q. Those you called your pick-up sheets?

A. Yes.

Q. And from these they would be transposed then to these larger sheets, which are called what?

A. These are the daily summaries.

Q. Now, referring to the daily summaries, who made those up?

(Testimony of Loren Hunt.)

A. Made up by the head timekeeper.

Q. Was he working in your place under your direction?      A. He was.

Q. In other words, this is all made up on the job at Pit River and brought into the San Francisco office?

A. That is right, they were sent in daily to the San Francisco office.

Q. Those daily summaries, do they show the type of work, or the place the various men were working?

A. They show the type of work and also the place.

Q. Now, the statement that you made up was made up from records such as this which you summarized into the statement of what you claim was the charge?

A. That is right. They are made up from accumulated records.

Q. Now, these records of your charges for the item of labor, are they all made up in the same way from that same type of daily summaries and daily time cards?      A. That is right.

Q. How were the insurance items determined?

A. The insurance item was determined on a rate sent to us by our San Francisco office.

Q. Based upon that same identical payroll?

A. That is right.

Q. How were the records of the equipment kept on that job? Were [62] they kept on these records, or on something else?

(Testimony of Loren Hunt.)

A. They were kept on these records.

Mr. Moore: Pardon me. What do you mean by "these records"?

Mr. Wrigley: I was going to see.

Q. When you refer to these records, Mr. Hunt, do you refer to these so-called smaller sheets, or do you refer to the larger daily summaries?

A. On the pick-up sheets which you have in your hand, that shows the hours which the equipment works, and on the daily summaries it also shows the hours, but it shows our approximate cost of that equipment, operating cost.

Q. In making up this statement——

Mr. Moore: Pardon me for interrupting——

Mr. Wrigley: Surely.

Mr. Moore: I do not know whether I have my notes right. Do I understand the material appears on these sheets, or the use of equipment?

Mr. Wrigley: Labor and equipment. That is as far as I have asked him on those sheets.

Mr. Moore: I understand you to ask him with regard to material

Mr. Wrigley: Not yet.

The Court: Pardon me. Suppose you introduce those and mark them for the record, so that you can disclose what they are.

Q. Those are the daily sheets, are they?

A. Those are the daily sheets, yes.

The Court: He gave the date of the first one and the last. Mark them for the purpose of the record,



(Testimony of Loren Hunt.)

so that when you refer to them hereafter you will know what is referred to.

Mr. Wrigley: I think it would be well to mark them so we [63] can refer to them specifically.

The Clerk: For identification?

Mr. Wrigley: I would say for identification was sufficient.

(The documents in question were marked  
"Defendants' Exhibit I For Identification.")

Mr. Wrigley: We would ask that this daily summary for identification be also marked.

(The documents in question were marked  
"Defendants' Exhibit J For Identification.")

Mr. Wrigley: Q. Now, were daily sheets and daily summaries kept throughout the entire job at Pit River?

A. They were kept entirely at the Pit River.

Q. I say, were they kept throughout the entire period? A. Yes,

Q. These particular daily summaries do not cover all of them, just showing how you kept the records?

A. That is right; they are samples.

Q. How did you keep records with reference to the steel that was used there?

A. In what regard?

Q. For example, without going into the correctness of these accounts, you make certain charges against Soule Steel Company for certain steel used

(Testimony of Loren Hunt.)

in certain piers. Where is the record, what type of record was kept of that steel?

A. The railroad steel was purchased for that entire purpose, with the exception of the rails that we had to run our cars on, which is very minute.

Q. The rails to run your cars on was an entirely different sized rail, weren't they?

A. No, they were not.

Q. The same size?

A. The same size. They were a 40-pound rail.

Q. What other type of steel was purchased for use in that interior falsework?

A. We purchased some angle iron, which we cut up into clips to weld onto the railroad rails, and also in a number of [64] cases we purchased angle iron that was used in place of rail.

Q. You mean as uprights?

A. As uprights.

Q. Now, were there any other types or kinds of steel purchased and used for the interior falsework?

A. That covers it, with the exception of bolts and nuts and miscellaneous.

Q. What would bolts and nuts be used for?

A. The 6 by 6's were bolted onto these angle plates. The braces were bolted onto these rails.

Q. How was the record of the oxyacetylene welding and the rods kept, as used on the interior falsework?

(Testimony of Loren Hunt.)

A. The majority of the oxyacetylene was charged directly to the shop and then it was charged out as it was taken from the shop.

Q. How was the record kept on that? Who kept it?

A. The accountant. When the material was purchased we purchased it for a certain item of work, and when the invoice would come in we would note on this invoice where this material was going, and the accountant would keep track, accumulate it.

Q. Now, were any of the records there not kept under your direction for any of the materials or labor for the interior falsework?

A. I know of none.

Q. And the statement in question of these charges was made up by you, personally, from those original records?

A. From the summaries.

Q. From the summaries? A. Yes.

Q. Have you checked this carbon copy that I am holding to know whether that is a correct copy of your original summary that was furnished to Soule Steel Company?

Mr. Moore: Just a minute. That is a little broad question, a duplex question.

Mr. Wrigley: I will agree with you. I will agree with the [65] last part.

Mr. Moore: I think also it should have some dates attached to it.

(Testimony of Loren Hunt.)

Mr. Wrigley: I think the question has several objections. Would the reporter read it?

(Question read.)

Mr. Wrigley: I would ask that the whole question be withdrawn.

Q. Have you checked this summary and know that it is a correct summary as made up by you of the charges for the interior falsehood?

Mr. Moore: I am going to object. That calls for a conclusion. You say a correct summary. We question its correctness.

Mr. Wrigley: If that is your objection—that this is a correct copy of the summary that he made——

Mr. Moore: There is no objection to that.

Mr. Wrigley: That is the intent of this question.

Mr. Moore: I have no objection to that.

Mr. Wrigley: Because this is a carbon of it.

Mr. Moore: I have no objection to it.

Mr. Wrigley: For the present I would ask merely that this be marked as next in order for identification.

(The document was thereupon marked "Defendants' Exhibit K For Identification.")

Mr. Wrigley: Q. I am showing you, Mr. Hunt, what has been marked "Defendants' Exhibit B For Identification." I will ask you to examine that picture. Referring first to the so-called cross pieces, what size were they?

(Testimony of Loren Hunt.)

A. The horizontal members were 6 by 6's. [66]

Q. And the braces were what size?

A. 2 by 6.

Q. And the templates were what size?

A. Usually 3 by 4.

Q. And the so-called spacers, holding the bars apart.

A. 3 by 4.

Q. Now, in making up your summary or statement of the cost of the interior falsework, did you charge this entire cost of all the inside lumber?

A. All the inside lumber was charged to that account.

Q. A hundred per cent?

A. A hundred per cent.

Q. Now, referring to the upright rails, which the previous testimony shows was 10-foot——

A. 12 feet would be closer. 12 feet was the maximum spacing we permitted, and they varied to 10, so 10 is all right.

Q. What percentage of the cost of those rails is included in this so-called summary of yours?

A. 100 per cent.

Q. Now, the clips that were welded to those rails to hold the cross members, how were they charged?

A. They were charged 100 per cent.

Q. Now, you have a small item in there of nails. Where were the nails used?

A. Nailing the 2 by 6 braces to the 6 by 6 horizontal members.

Q. The nails, in other words, were spikes?

(Testimony of Loren Hunt.)

A. 30 penny nails.

Q. Now, the bolts that you have charged——

Mr. Moore: I don't want to interrupt. Did you ask him how the nails were charged, or did you overlook it?

Mr. Wrigley: What percentage?

Mr. Moore: Yes.

Mr. Wrigley: I will clear it up. It was clear to me; maybe it wasn't clear to you.

Q. Now, the nails, what percentage of the nails used to hold these [67] angular braces inside was charged to inside falsework?

A. All the nails used were charged 100 per cent. to this account.

Q. You mean all the nails used inside?

A. Inside.

Mr. Moore: May I interrupt a moment?

Mr. Wrigley: Surely.

Mr. Moore: When you say "this account," do you mean they were charged on this account to Soule? Is that the intent?

Mr. Wrigley: That is the intent of my question.

Mr. Moore: O.K.

Mr. Wrigley: Q. Now, the bolts that were used inside to bolt the 6 by 6's, how were they charged?

A. They were charged 100 per cent.

Q. To Soule. Now, did the charge for any of the interior falsework items include the cost of any of the exterior forms or scaffolding used?

A. Will you have that repeated, please?



(Testimony of Loren Hunt.)

(Question read.)

A. No.

Q. Did the charge summarized by you for interior falsework include any of the cost of building the—we call it an elevator outside?

A. The tower?

Q. You call it a tower?

A. No, there is no cost.

Q. The exterior stairway that was used to reach any given height, what proportion, if any, of that was charged up to interior falsework?

A. None.

Q. Are you familiar with the specifications of the Government for these various piers?

A. Yes.

Q. Did the specifications, or any of the drawings furnished you by the Engineers, call for any particular size or type or any interior falsework at all?      A. No falsework.

Q. Did the specifications or drawings in any particular require [68] these rails?      A. No.

Q. Calling your attention now to what has been marked as Defendants' Exhibit A For Identification, what you refer to as being the tower is this so-called elevator or lift that is outside the work, entirely?      A. That is right.

Q. And the boom that we see a part of there is what is commonly referred to as the Chicago boom?

A. Yes.

Q. And that is a boom used for what purpose?

(Testimony of Loren Hunt.)

A. It was erected by Soule Steel to lift their steel, reinforcing steel.

Q. Now, referring again to this picture, and particularly to the portions of it where the outside exterior concrete form is, can you tell by looking at that picture whether that is just being placed there to pour the concrete, or whether the concrete has already been poured?

Mr. Moore: What is the place, may I ask?

The Witness: This concrete form.

The Court: Frame for concrete.

A. No, I couldn't say definitely.

Mr. Wrigley: Well, could your concrete at any time be poured at a point above where you had framed for the concrete outside?

A. It couldn't be poured above where we have forms.

Q. Were there any inside concrete forms?

A. On two piers, yes.

Q. Which piers were those?

A. Piers 3 and 4.

Q. When you refer to inside forms, what are they commonly referred to on that job, as what?

A. As cores.

The Court: Q. As what?

A. Cores, hollow sections.

Q. In order to pour the concrete you would have to have that inside form, wouldn't you?

A. That is right.

Q. On piers 3 and 4 only, where there are hollow spaces or cores within the piers, themselves?

(Testimony of Loren Hunt.)

A. That is right. [69]

Q. And that is the only inside form work that was necessary in the pouring of the concrete there?

A. That is all.

Mr. Moore: I object to that question. It calls for the conclusion of the witness, if I understand the question to mean that those are the only things that were necessary in order to pour the concrete in such form.

Mr. Wrigley: That was not my question.

The Court: Read the question, Mr. Reporter.

(Question read.)

Mr. Moore: What inside form work do you mean?

Mr. Wrigley: The cores that he is talking about.

Q. Now, with the exception of Piers 3 and 4, namely, the piers immediately on the north side of the Pit River, was there any interior form work on any of the other piers?

A. No, all the other piers were solid.

Q. What depth of concrete was permitted to be poured on that job at a time?

A. 20 feet was the maximum that was placed.

The Court: Q. What do you mean by that?

A. Height of lift.

Q. That is, when you are pouring your concrete, do you pour the height of 20 feet?

A. We poured the height of 20 feet, I believe, is the maximum we placed it.

The Court: I just wanted to follow the question.

(Testimony of Loren Hunt.)

The Witness: Our average lift was around 12 feet.

Mr. Wrigley: Q. Coming to this particular point, at this particular elevation do you know whether that is correct, there, which is marked 163 feet elevation (indicating)?

A. I couldn't say whether it is correct or not.

Q. At or about that elevation, namely, just as you are leaving the base, what thickness were the concrete lifts or pours?

A. Well, the height of the lift depended upon a number of things. [70] In the first place, it was only 5 feet. That was limited by the specifications.

The Court: Q. Limited by what?

A. Limited by the specifications in the base, but as we got above the base, the height of the lift depended upon the location of the two-inch bars, where they were to be welded. In general, we kept our lifts, lift verticals, to 12 feet.

Q. Tell me, while I think of it, the welding job was not completed before any concrete went in at all; it progressed, did it?

A. It progressed. We led up. The steel had to be placed, and then it was welded, and then the concrete was placed.

Mr. Wrigley: Q. You heard the previous testimony that, generally speaking, this steel was 60 feet long, in two tiers, overlapping in length so that the welds did not come immediately opposite each other in the two tiers; that was correct, wasn't it?

A. That is correct.

(Testimony of Loren Hunt.)

Q. It is also correct, isn't it, that the steel had to be put up and in place before it was welded?

A. That is correct.

Q. And had to be welded before you could pour the concrete?      A. That is correct.

Q. Now, generally speaking, how far were the welders ahead of the concrete pouring?

A. Well, we were practically on top of them.

Q. That is——

A. That is, we were waiting for the welders to get out of the way so we could place the concrete.

Q. Would you be starting the bottom as they welded the top, or would you be almost up to them pouring your concrete?

A. No, you would have to come up close to the weld and then wait for them to weld.

Q. The steel would then be placed above that, or 60 feet higher, [71] would it not?

A. That is right.

Q. How many lengths of steel were commonly ahead of the pouring of the concrete?

A. Not more than one length.

Q. Well, you are working on one, pouring the concrete, and they would be how much above that?

A. 60 feet would be the maximum.

Q. How about the overlap?

Mr. Moore: Q. As I understand, if I am right, they come up practically to where they were welding, and then the additional rods were lower down, is that correct?      A. That is——

Q. And then you proceeded on.

(Testimony of Loren Hunt.)

Mr. Wrigley: Q. Looking again at this picture, how far would you say it is from the tops of those rods down to where the top of the concrete form is?

A. Very close to 60 feet, maybe 65.

Q. If that were only 65 feet, what would the length of those rods be?

A. Those rods would possibly be 60 feet.

Q. To what extent do those rods overlap each other? A. Those rods are butt-welded.

Q. No, I refer to the two piers, one inside and one outside.

A. The piers were approximately 5 to 6 feet apart. It varied.

Q. The two sets of welds would be five to six feet apart only? A. Yes.

Q. Now, were you, under the specifications, permitted to pour concrete all the way from the top of the staging down to where you were pouring it down here?

A. There is nothing in the specifications that limits, that specifically limits the height of the flow of the concrete.

Q. Were you permitted at all to pour any concrete in a chute on that job?

A. Not permitted to chute concrete. You must drop it vertically in a vertical enclosed pipe. [72]

Mr. Moore: I do not like to interrupt, Mr. Wrigley; are you referring to the provisions of the specifications, or what the inspectors required?

Mr. Wrigley: I am referring to the specifica-



(Testimony of Loren Hunt.)

tions, themselves. They are quite specific in that. The specifications in this case detail the pouring of the concrete, didn't they?

The Witness: I don't understand your question, when you say "detail."

Mr. Wrigley: Q. Well, they told you how it was to be mixed, didn't they? A. That is right.

Q. And they told you the different depths of the various concrete lifts; wasn't that specified in the specifications?

A. The height of the lift was specified in the footings as 5 foot.

Q. And it was specified also that you could not pour it or chute it to the place——

A. You couldn't chute concrete.

Q. That was in the specification?

A. That is right.

Q. Referring again to Defendants' Exhibit B, and noticing that the elevation is shown there to be 923 feet, that point in the air, was any portion of that staging at that time used by Union Paving Company for pouring concrete?

A. No, not at that time.

Mr. Moore: You are talking about the top layer, are you?

Mr. Wrigley: No, the top layer on this particular picture at this particular time.

Q. At the time that this picture was taken, Union Paving Company was working lower down pouring?

Mr. Moore: If he knows.

(Testimony of Loren Hunt.)

Mr. Wrigley: Q. Do you know where the Union Paving Company was working at the time this picture was taken? [73]

Mr. Moore: I would like to ask this question:

Q. Were you present when the picture was taken?

A. I don't believe I was up there at the time, no.

Mr. Wrigley: Q. Is that a correct picture depicting what was there at that elevation of 923 feet?

A. I believe so, yes.

Q. As a matter of fact, that is typical of all elevations in all of the piers of that type, isn't it?

A. That is right.

Q. They were all built of 6 by 6 horizontals, using 2 by 6 braces, held up by rails, and so on. I ask you to examine this whole set of pictures, six in number, and tell me what they depict; in other words, which abutments appear.

A. Abutment 1.

Q. Those are all various stages of abutment No. 1. Abutment No. 1—this question may be leading; I think it is covered, however—was the first abutment on the south side of the river that constituted not only the tunnel where the S. P. came out, but also for the roadway of the State highway?

A. It was the abutment to the State highway, yes, and it was the tunnel section of the railroad.

Q. In other words, this bridge, as finished, is used by the railroad and also as the highway crossing from one mountain to the other at a high level?

(Testimony of Loren Hunt.)

A. Yes.

Mr. Moore: I suggest it is a two-decker bridge, I believe, isn't it?

Mr. Wrigley: I think that is a technical description of it.

The Witness: Double deck.

Mr. Wrigley: Does your Honor want to recess now? I noticed myself it is after four o'clock.

The Court: Very well, we will take an adjournment until tomorrow morning at 10:00 o'clock.

(Adjournment taken until tomorrow, Friday, April 9, 1943, at 10:00 o'clock a. m.)

[Endorsed]: Filed April 9, 1943. [74].

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Friday, April 9, 1943

10:00 O'Clock A. M.

The Clerk: Soule Steel v. Union Paving Company.

The Court: Proceed, gentlemen.

LOREN HUNT

Recalled;

Direct Examination (Continued).

Mr. Wrigley: Q. Mr. Hunt, when we adjourned yesterday you were shown this bunch of pictures,

(Testimony of Loren Hunt.)

and you stated they were a series of pictures in the various stages of development on Abutment No. 1?

A. That is right.

Mr. Wrigley: There is a group, here, that I would ask be marked as one exhibit, but with separate identification. What is the next number?

The Clerk: L. For identification?

Mr. Wrigley: Yes, for identification at this time.

(The photographs in question were thereupon marked L-1, L-2, L-3, L-4 and L-5 for Identification.)

Mr. Wrigley: Q. Before showing you those pictures again, Mr. Hunt, how many so-called abutments were there on this Pit River project?

A. There were four abutments.

Q. How many piers were there?

A. Ten piers.

Q. In addition to the four abutments?

A. That is right.

Q. As to Abutment No. 1, was it similar to the other three abutments?

A. No, it was entirely different.

Q. In other words, that one abutment at the south side was the abutment that also constituted the tunnel for the railroad out of the mountain, and also for the highway crossing, and coming out?

A. That is right.

Mr. Wrigley: Mr. Moore, this question may be leading and [75] you may object to it on that ground.

(Testimony of Loren Hunt.)

Q. Your charges that you have made against the Soule Steel Company affect only abutment No. 1, and not abutment No. 2, 3 and 4?

A. That is right.

Q. State, generally, the differences between Abutment No. 1 and the other three abutments, with a view of explaining the reason why there was not a charge made against Soule in connection with Abutments 2, 3 and 4.

Mr. Moore: The question is complex and also that part which calls for a conclusion is objectionable.

Mr. Wrigley: Will the reporter read the question?

(Question read.)

The Court: Is 1 the double-decker?

Mr. Wrigley: The double-decker abutment, and there are other features also.

The Court: Develop the facts.

Mr. Moore: My objection does not go to the point, your Honor, distinguishing between the two sets of abutments; it is the reason why he made the charges against the one and not the other. I think that part is asking for his conclusion, and therefore should be rephrased when you come to it, Mr. Wrigley.

Mr. Wrigley: Q. Showing you, Mr. Hunt, the picture that has been marked L-4 for Identification, that is the picture of Abutment No. 1 taken at what stage?

(Testimony of Loren Hunt.)

A. Placing the lining of the tunnel section, these rib forms, or bracing for the forms.

Q. Did you have anything like that on any of the other abutments? A. No.

Q. Showing you next the picture that has been marked L-5 for Identification, that was taken at what stage of the work? [76]

A. That was taken after the reinforcing steel was placed over the arch, but not over the mass section.

Mr. Moore: Pardon me, just a moment. Don't you think you ought to explain the difference between the arch and the mass section?

Mr. Wrigley: Q. Do you understand, Mr. Hunt?

A. I understand that question. On the left——

Mr. Moore: Pardon me, just a moment.

Mr. Wrigley: Q. Do you refer to the left of that picture?

A. On the left of that picture——

Mr. Moore: Mr. Wrigley, just a moment. I have a large sized drawing of that.

Mr. Wrigley: Of that?

Mr. Moore: A fairly large sized drawing, (producing a drawing).

Mr. Wrigley: Mr. Moore, is there any objection to my asking the Clerk at this time to mark this for identification?

Mr. Moore: Not in the slightest. I think it ought to be.



(Testimony of Loren Hunt.)

(The drawing was marked "Defendants' Exhibit M For Identification.")

Mr. Wrigley: Q. Mr. Hunt, leaving momentarily the pictures and looking at this drawing which has been marked M-1 For Identification, is that a correct draftsman's drawing illustrating the work on Abutment No. 1? A. Yes.

Mr. Moore: That is the Government's drawing. It is an enlargement of the plans and specifications.

Mr. Wrigley: Q. And this drawing is the drawing to which the work was performed?

A. Yes.

Q. Now, Mr. Moore asked that you more clearly point out the portion that is called the mass portion.

A. This portion in [77] here (indicating).

Q. Does that drawing also show the location of the reinforcing steel that was placed in that abutment by Soule Steel Company?

A. It does, a portion of it.

Q. A portion of it?

A. There are three or four prints of that.

Q. Four different prints? A. Yes.

The Court: Q. What do you mean by that?

A. Well, this is one print in connection with the——

Q. Oh, I see, yes.

A. These are just sections.

Mr. Wrigley: Q. So that drawing and the mass portion illustrates what you had reference to when you referred to the mass portion of this abutment?

(Testimony of Loren Hunt.)

A. That is right.

Q Did the other abutments have *you* similar mass portions and tunnel portions as abutment No. 1 did?      A. No.

Q. Referring back now, Mr. Hunt, to the picture marked for identification M-5, can you point out in that picture the items for which Union Paving Company made a charge against Soule Steel Company?

A. Only a portion of the items.

Q. Point out what piers they are.

A. These rails, the steel coming up through—this rail, *this rail*, and this structural steel, second-hand structural steel we purchased to support that steel.

Mr. Moore: I will ask that the last go out, to support that steel.

The Court: He is an engineer.

Mr. Wrigley: Q. Does anything else appear from that drawing or in that picture for which you made a charge against the Soule Steel Company?

A. On the other side, but there are some supports necessary to support the reinforcing steel.

The Court: Q. You say there are some supports. What are [78] the supports?

Mr. Wrigley: Q. Made of what?      A. Steel.

Q. What sized steel?

A. Either rail or second hand iron that we purchased.

(Testimony of Loren Hunt.)

Q. Now, looking at this same picture and the so-called wooden portions of the pier, has that any connection with the reinforcing steel at all?

A. Are you referring to this portion on the outside of the forms?

Q. Yes, the lower left-hand corner.

A. No.

Q. Has any portion of that been charged against Soule Steel?      A. No.

Q. Now, did the other abutments, 2, 3, and 4, have any similar upright steel reinforcing or supports for reinforcing steel put in by Union Paving Company?

Mr. Moore: I really think, your Honor, that asks for a conclusion. I think there should be an explanation as to how that was used in supporting the reinforcing steel, and not just the blanket statement that it was used.

Mr. Wrigley: I will come to that later. What I am trying to bring out, Mr. Moore, if I may state, these things for which he makes a charge in Abutment No. 1, none of them are in Abutments Nos. 2, 3, and 4.

Mr. Moore: I will withdraw the objection.

The Court: That is the way I understood it.

The Witness: That is, there were no steel rails to support it.

Mr. Wrigley: In the other three abutments.

The Court: In the other three.

Mr. Moore: You see, what I am questioning is whether reinforcing steel was necessary, or not.

(Testimony of Loren Hunt.)

The Court: You may cross-examine on that.

Mr. Wrigley: Q. I will show you next, Mr. Hunt, a picture that has been marked L-1 For Identification, and call your attention to a large amount of what appear to be wooden forms. All that was for the concrete, was it not?

A. That was for the concrete.

Q. Is any part of those wooden forms charged against Soule Steel Company? A. No.

Q. And you had similar exterior wooden forms on all the other abutments, didn't you?

A. We had similar forms.

Q. Showing you next the picture which is marked L-2 For Identification, that shows the Abutment No. 1 as the forms were stripped from the exterior concrete and the abutment was practically complete? A. That is right.

Q. And showing you this next picture, which is marked L- For Identification, abutment No. 1, what that illustrates is one side of the finished job and the rubble or rock being placed to hold the steel? A. That is right.

Q. Was any part of that charged up to—when I refer to that, I refer to the rubble rock—charged up to the Soule Steel Company? A. No.

Mr. Wrigley: We ask that this bunch of pictures be accepted in evidence as such, not for identification at this time.

Mr. Moore: No objection.

(Defendants' Exhibits L-1 to L-5, inclusive,

(Testimony of Loren Hunt.)

For Identification, were thereupon received and marked in evidence.)

Mr. Wrigley: Q. Mr. Hunt, can you describe for us the so-called placement of the reinforcing steel, what reinforcing steel and what sized reinforcing steel went into Abutment No. 1?

A. I believe the maximum size was inch and a quarter. [80]

Q. And that was placed how?

A. Over the tunnel section. It followed the contour of the forms of the arch, and on top, the upper mat over this section was horizontal. There was vertical steel around the edge of the mass section, and also on the other side, the arch.

Q. And that steel was placed before the concrete was poured, of course? A. Yes.

Q. Now, how was that reinforcing steel held in place prior to the pouring of the concrete? I am talking now about Abutment No. 1.

A. The steel was tied and supported by braces erected by Union Paving Company.

Q. What type of braces?

A. Wooden braces or steel braces, in the internal, in the inside section, and the last section was steel sections.

Q. And the wooden——

A. The wood over the arch was supported by what is known as dough-balls resting on our forms.

Q. Showing you the drawing that has been marked M For Identification, point out on that

(Testimony of Loren Hunt.)

where you used steel supports to hold the reinforcing steel?

A. We used supports, here, to hold this steel out here, and used steel supports up here (indicating).

Mr. Moore: Pardon me. Will you mark those on there?

Mr. Wrigley: Now we are asking for the steel supports.

Mr. Moore: Will you letter those in some way?

The Witness: These are approximate, three supports.

Mr. Wrigley: Three steel supports. Now, I want to change the color of this before you come to the wooden supports.

Q. The red illustrates the steel supports?

A. Put one there, too—I believe there was one there, (indicating).

Q. Now, the steel supports you have illustrated in red. Sketch in blue where the wooden supports to hold the reinforcing steel [81] were placed, roughly.

A. We used no wood.

Q. Oh, you used no wood?

A. Except these concrete dough-balls.

Q. Frankly, I do not understand, and I think the Court might desire further elucidation on what you mean by concrete dough-balls. What are they?

A. They are cubes, about 3 by 3, made up of sand and cement, that are placed under this steel along this arch to give the proper clearance.

Q. Are they put there as a form for the con-



(Testimony of Loren Hunt.)

crete, or are they put there to hold up the reinforcing steel?

A. They are put there to hold the reinforcing steel.

Q. Did they remain there?

A. They remained there. That was done by the Soule Steel.

Mr. Moore: Q. That was done by Soule?

A. That was done by Soule.

Q. Do I understand you to say now the dough-balls were put there by Soule? A. Yes.

Q. Furnished by whom?

A. The Soule Steel.

Mr. Wrigley: Q. As far as the dough-balls are concerned, there is no charge for placing them?

A. Soule Steel did all that.

Q. How are they held in place?

A. They are held in place by a little wire that is embedded in the dough-ball.

Q. Soule Steel did that, also?

A. That is right.

Q. Where was lumber used in any reinforcing or holding up the steel on Abutment No. 1?

(Discussion by the Court with Counsel in another case.)

Mr. Wrigley: The examination in which I was asking you about lumber was error on my part. I misread the statement.

Q. No charge is made against the Soule Steel Company for placing any lumber supports, so far as Abutment No. 1 is concern- [82] ed? A. No.

(Testimony of Loren Hunt.)

Q. Now, Abutment No. 1 was not only first in number, but it was also first in order of performance, was it not? A. That is right.

Mr. Wrigley: At this time I would ask that this drawing, which has heretofore been marked for identification, be accepted in evidence as Defendants' Exhibit M.

The Court: It may be admitted and marked.

(Defendants' Exhibit M For Identification was thereupon received and marked in evidence.)

Mr. Wrigley: Q. Showing you a photograph, can you tell us what that depicts, which pier?

A. Pier 2.

Q. That is Pier 2 on the south side of the Pit River.

Mr. Moore: May I be permitted to make a suggestion, your Honor? I have here a Government drawing which shows the location of these abutments and piers, and it may assist your Honor in following it.

Mr. Wrigley: I think it would help in following the whole case.

Mr. Moore: We might have it marked and I will explain it to your Honor. Abutment 1 that has been spoken of is here where there is a hill. The tunnel comes out at Abutment 2.

Mr. Wrigley: In other words, down here is Redding.

Mr. Moore: Abutments 2 and 3 are here, and then Abutment 4, to give your Honor the picture.

(Testimony of Loren Hunt.)

Mr. Wrigley: This illustrates the two levels, the highway and the railroad.

The Court: Where is Pier 2?

Mr. Wrigley: That would be this pier (indicating). I will ask that this be marked as Defendants' Exhibit next in order. [83]

(The drawing was thereupon received in evidence and marked "Defendants' Exhibit N.")

Mr. Wrigley: Does your Honor want this drawing before you?

The Court: I am familiar enough with it. I will follow you.

Mr. Wrigley: We offer in evidence Defendants' Exhibit next in order this photograph of what the witness has identified as being Pier 2.

(The photograph was thereupon received in evidence and marked "Defendants' Exhibit O.")

Mr. Wrigley: I do not know whether your Honor noticed particularly, but it applies to all of these piers, you will note in the bottom or base there is a very decided flare and a very wide base, but after they get to a certain point, then the slope is not as pronounced.

Q. Now, calling your attention to this picture on Pier 2, the uprights that appear there in all directions at an angle, that is the exterior reinforcing steel, is it not?

(Testimony of Loren Hunt.)

A. This is the exterior reinforcing steel, the two-inch square reinforcing steel.

Q. And the tower appears on one side of it. Now, was any portion of that tower charged to the Soule Steel Company? A. No.

Q. Was that tower used as support for the Chicago boom that was used to raise the reinforcing steel? A. It was.

Mr. Moore: I object to the form of the question, raising the reinforcing steel for that sole use. It was used for other purposes, too.

Mr. Wrigley: That is correct.

Mr. Moore: By the Union Paving Company.

The Court: Since there was no charge for that, why not go to matters that were charged, so we would not be consuming so much time? [84]

Mr. Wrigley: I wanted to show that certain items that appeared here were not charged to them, and what inside work was charged.

The Court: We are not concerned here with what was not charged, but what was charged.

Mr. Wrigley: Q. Now, on that picture, the charge that was made against the Soule Steel Company was for what work and what materials?

A. For the vertical railroad rail inside the reinforcing steel, the horizontal 6 by 6's and the 2 by 6's.

The Court: Q. Is the horizontal 6 by 6's the wooden structure?

A. That is the wooden structure. There is one

(Testimony of Loren Hunt.)

horizontal right in there, and the 2 by 6 cross bracing.

Mr. Wrigley: Q. In other words, your testimony given yesterday as to Pier 4——

The Court: This is Pier 2, isn't it?

Mr. Wrigley: Q. Pier 2—is the same here, that all the interior framework or falsework was charged a hundred per cent to Soule Steel Company? A. That is right.

Q. And all of the exterior work was charged 100 per cent. to Union Paving Company?

A. That is right.

Q. Now, that applied to which piers, in which that procedure was followed?

A.. Piers 1 to 7.

Q. 1 to 7, inclusive, a hundred per cent of all inside falsework was charged to them. Mr. Hunt, to clear up a matter that Mr. Dowling calls my attention to, an apparent conflict with your testimony yesterday, in which piers were there inside cores? A. Piers 3 and 4.

The Court: Q. Were all other piers solid piers?

A. Piers 1, 2, 5, 6, and 7 were solid.

Q. Just two that had cores in them?

A. That is right. [85]

Mr. Wrigley: Q. Was any part of the cost of constructing those interior cores charged to Soule Steel Company? A. No.

Mr. Wrigley: Yesterday, may it please the Court, two large photographs were marked, respectively, A and B For Identification on Pier 4. I

(Testimony of Loren Hunt.)

would ask that they be accepted in evidence at this time.

Mr. Moore: No objection.

(Defendants' Exhibits A and B For Identification were thereupon received and marked in evidence.)

Mr. Wrigley: I will ask the Clerk at this time to mark this photograph for identification only.

(The photograph was marked "Defendants' Exhibit P For Identification.")

Mr. Wrigley: Q. Mr. Hunt, showing you a photograph, which is marked "Defendants' Exhibit P For Identification," can you tell us what piers are there shown?

A. This is Pier 8, 9, 10.

Q. Was any interior falsework used on piers 8, 9 and 10? A. No.

Q. So no charge for any interior falsework was then made against Soule for those piers?

A. No.

Mr. Wrigley: We offer this photograph in evidence.

(Defendants, Exhibit P For Identification was thereupon received and marked in evidence.)

Mr. Wrigley: Q. Showing you, Mr. Hunt, this photograph, can you tell us what that depicts?

A. It depicts the welding operation of the two-inch steel.



(Testimony of Loren Hunt.)

Q. Is that steel in final place after it was welded?  
A. Yes.

Q. Its permanent position. How far apart were these so-called two-inch steel bars?

A. Approximately six inches, center to center.

[86]

Q. And both the inside pier and the outside pier are approximately the same distance apart?

A. Yes, you have to realize those piers are on a batter.

Q. Pardon me for interrupting you. You say they are on a batter. What do you mean by the word "batter"?

A. They are inclined. They vary. The batter, in the lower portions, is three inches in twelve; that is, you go up twelve inches, you go in three inches; and that batter changes to at the top I believe it is  $1/8$  of an inch in twelve inches.

Q. So would that mean that your bars are slightly closer at the top than they are at the bottom?  
A. They are.

Q. This question may be leading. As you go up there is a less number of bars as you go up?

A. Yes, a certain number of bars drop out.

Q. Can you tell us as to, we will say, Pier 3, the approximate size of that pier at its base?

A. I believe it was 90 by 95 feet.

Q. When it got to the extreme top——

A. The extreme top, the web was 5 feet wide and the two columns, I believe, were about 15 feet

(Testimony of Loren Hunt.)

square, and the entire length of it was very close to 50 feet.

Q. You have used the word "web." What do you mean by the web?

A. I believe you can show that by one of the pictures of the finished product.

Mr. Moore: We make no objection, but I do not see what that has to do with this controversy.

Mr. Wrigley: We offer this photograph as Defendants' Exhibit next in order. That is the one of the steel.

(The photograph was received in evidence and marked "Defendants' Exhibit Q.")

Mr. Wrigley: Q. Mr. Hunt, looking at this picture, tell us [87] which pier is.

A. That is Pier 1.

Q. The first pier as you leave the Abutment No. 2 on the south side? A. That is right.

Q. Now, in general appearance, outside of the fact that some piers were higher than others, as you went down toward the river, were all of the piers, 1 to 7, generally of that type and appearance?

A. Generally, yes.

Q. And they would all slope similar to this one?

A. It varied according to the height.

Q. When you referred to the web, what portion of the picture—in other words, what portion of the pier do you call the web?

A. It is the portion where the ladder and the man is on the ladder, between the two columns.

Q. The web is the portion tying the two exterior

(Testimony of Loren Hunt.)

parts—in other words, in the form of an “H” from the top, isn’t it?      A. Approximately.

Q. Taking from the extreme sides, as I would call them, of these piers, how wide were they over-all?      A. At the top?

Q. Yes.

A. To the best of my recollection it was 50 feet.

Q. Now, were all these piers, 1 to 7, similar in design as Pier 1, with a web like that?      A. Yes.

Q. Where would the reinforcing steel be in that pier?

A. The two-inch reinforcing steel is around the perimeter.

Q. Also the web portion?

A. In the web portion, too.

Q. The web portion, also. In other words, the two rows of two-inch steel around the outside in all the piers, 1 to 7, were similar?

A. They were similar, except at the top. That two-inch steel in some piers dropped down to, I believe, an inch and a quarter.

Mr. Wrigley: We offer this picture next in order. [88]

(The photograph was admitted in evidence and marked “Defendants’ Exhibit R.”)

Mr. Wrigley: Q. Showing you another picture, and starting from the right-hand side, what piers show there? The pier that appears to be completed on the right-hand side—which pier is that?

A. Pier 1 and Pier 2.

Q. Pier 2 in the course of construction?

(Testimony of Loren Hunt.)

A. That is right.

Q. On the left-hand side, low down, what is that structure that appears there?

A. That looks like Pier 4.

Q. Which is across the river from Pier 3?

A. Across the river.

Q. Then coming up the hill, directly above that, on the left-hand side, are what piers?

A. 5, 6, and 7.

Q. In the course of construction? A. Yes.

Q. The other piers, from 8 on, and the abutments, 1, 2, 3 and 4, do not show here, at all?

A. Abutment 4 you can faintly see.

Mr. Wrigley: We offer this next in order.

(The photograph was received in evidence and marked "Defendants' Exhibit S.")

Mr. Wrigley: Q. Calling your attention, Mr. Hunt, again to Defendants' Exhibit B, and the interior falsework, at the time that picture was taken was that falsework serving any purpose other than to hold the reinforcing steel?

A. At Elevation 903, as marked on the picture, it is holding the reinforcing steel.

Q. Showing you Defendants' Exhibit A, the interior falsework shown at those elevations, was that at that time being used for any purpose other than to hold the reinforcing steel?

A. Not at an elevation above 863.

Q. You knew Mr. Stevens on the job, did you not? A. Yes.

(Testimony of Loren Hunt.)

Q. Was he on the job for the entire period of the work?

A. He was there most of the time. He was there practically a [89] hundred per cent.

Q. Did he leave that job for other jobs at any time?

A. I don't know whether he left for other jobs.

Q. Did he leave there so he was not in charge?

A. During the time we were constructing Pier 1, Mr. Sparling was in charge. I don't think it was very long—three weeks, approximately.

Q. I believe the evidence showed that the last steel went in in May of 1941; was Mr. Stevens there at that last work?

A. He was there most of the time.

Q. On Pier 4?

A. He left for short periods of time but not for long.

Q. On Pier 4, when Mr. Stevens was not there, who was in charge?      A. Mr. Klein.

Q. Did you have any conversation at any time with Mr. Stevens with reference to this interior falsework?

A. Approximately what time? I had various conversations.

Q. How early did you have any conversation with Mr. Stevens? Can you fix——

A. I couldn't fix any date.

Q. Was it in 1940 or 1941?

A. We had some discussion in 1941.

(Testimony of Loren Hunt.)

Q. We will go back to 1940, which was the year the job started. A. 1939 it was started.

Q. Yes. When you started the actual work of erecting the steel, the reinforcing steel.

A. In Pier 1?

Q. Any point on the entire project.

A. I discussed it with Mr. Cochrane, the superintendent.

Q. You were there when that first steel started, were you not? A. I was there then.

Q. Can you give us the approximate date the first reinforcing steel was put in place?

A. In the middle of March in Abutment 1.

Q. Prior to that was any reinforcing steel put in place in any [90] of the piers and abutments?

The Court: What was that date, March what?

The Witness: I think our first pouring in Abutment 1 was March 21st or 22nd.

The Court: Q. 1940, or 1941?

A. 1940, and it was necessary to place the steel prior to that.

Mr. Wrigley: Q. Did Soule Steel Company turn in regularly, in accordance with the correspondence, their payrolls on that work?

A. They turned it in to the U. S. Bureau of Reclamation direct.

Q. Did you make a tabulation showing what those payrolls amounted to of the Soule Steel Company on that entire job?

A. We had that done.



(Testimony of Loren Hunt.)

Mr. Moore: I am going to object. I do not see what relevancy it has. Soule paid their labor.

Mr. Wrigley: The relevancy, as I see it, is this, that you are claiming \$22.50 a ton, you say for all the work, we say for half the work. We say that your construction is not in keeping with the facts shown by your own costs, that it cost you less than \$10 a ton up there to do that work. The witness will develop that from the facts.

Mr. Moore: If you are going to take the entire cost, but if you take the labor cost——

Mr. Wrigley: The labor cost is only one item.

Mr. Moore: That is only one item.

Mr. Wrigley: That is correct.

Mr. Moore: I do not see how they can prove what it cost you to do a job. I do not see what relevancy that has to the provisions of the contract, your Honor. I am going to object to this line of questioning as incompetent, irrelevant, and [91] immaterial, whether Soule made a profit or did not make a profit.

The Court: We are not here concerned with profit or who made it.

Mr. Wrigley: Q. Mr. Hunt, this book I would ask you to examine and tell us——

Mr. Moore: We will stipulate that that is the Government plans and specifications.

Mr. Wrigley: The printed specifications.

Mr. Moore: The printed specifications.

Mr. Wrigley: And we will stipulate, so the

(Testimony of Loren Hunt.)

record is clear on it, that, as previous witnesses have pointed out, the drawing accompanying this was on a small scale.

Mr. Moore: That is correct.

Mr. Wrigley: The large scale drawings contain more detail, and there are other drawings which supplemented these that contain further detail.

Mr. Moore: That, I assume, may be correct. I would have to confer. I know they are large scale drawings, your Honor. Whether there are supplemental drawings, I never went into it.

Mr. Wrigley: We offer this copy in evidence. It is not the original, but it is a copy of the printed specifications relating to this project.

(The document in question was received in evidence and marked "Defendants' Exhibit T.")

Mr. Wrigley: Q. Mr. Hunt, with reference to the size of the steel, first, was the same sized reinforcing steel used in all the piers? What was the largest sized steel that was used there for reinforcing?

A. Two inch square. [92]

Q. And the smallest size used for exterior reinforcing?

A. I believe it is  $\frac{3}{4}$  of an inch. Those are the horizontals.

Q. In the verticals, what is the smallest exterior reinforcing steel used?

A. I believe it was 1 inch. That was 8, 9, and 10.

(Testimony of Loren Hunt.)

Q. 8, 9, and 10, 1 inch. Now, the testimony yesterday brought out that the total tonnage of reinforcing steel was something slightly in excess of 5000 tons. Can you give us, roughly, what percentage or portion of that went into those piers 3 and 4 on the north side and south side of the river, respectively?

A. I would say roughly between about 45 per cent, maybe 50 per cent.

Q. Into those two piers alone? A. Yes.

Q. Were they the first ones done, or the last ones done?

A. They were the last ones. It was around half.

Mr. Wrigley: That is all.

The Court: We will take a recess.

(Recess.)

Mr. Wrigley: With the permission of the court and counsel, I would like to ask a few further questions I had forgotten. I thought I had completed the examination, but in looking at my notes I found I had not.

Q. Mr. Hunt, throughout I referred to the fact that there were two rows of exterior reinforcing on the piers. Was that on all the piers throughout their entire distance? A. No.

Q. Where was there any variation in the number of tiers?

A. There was variations on 2, 3, 4, and I believe 5 and 6.

Q. What was that variation?

(Testimony of Loren Hunt.)

A. Well, on Pier 3, there were three tiers at the bottom, and those tiers dropped out as they went up and ended up with one tier at the top. In Pier 4 [93] there were four tiers to start.

Q. Whether there were two tiers, three tiers, or four tiers, in each case they were held apart by separators, and those separators were made of what? A. 3 by 4 spacers.

Q. Were those separators removed later?

A. They were removed, yes.

Q. How were they removed?

A. They were cut up.

Q. So that it was not possible to use them again, or was it possible?

A. It was not possible.

Q. With reference to the 6 by 6's and the 2 by 6 interior falsework or framework, was that used over? A. Yes, to some extent.

Q. Explain what you mean by "to some extent"?

A. Well, it was necessary to remove all the lumber as the concrete came out, and that, in turn, was lowered to the ground, and what was usable was used again.

Mr. Moore: May I have that answer read?

(The reporter read the answer.)

The Witness: Can I correct that? There was concrete—as the concrete came up, not out.

Mr. Wrigley: Q. So that all 6 by 6's and the 2 by 6's in that interior work would be used over several times if they were usable?

(Testimony of Loren Hunt.)

A. That is right.

Q. Was it ever possible to use the so-called separators over?

A. Maybe in an isolated case or two, but actually they were cut in small pieces.

Q. Showing you what has been marked "Defendants' Exhibit K For Identification," that, you testified yesterday, was a correct copy of your summary of the charges.

A. Yes.

Q. As to the labor, and insurance, and equipment, you testified yesterday that came from the daily sheets and the daily summa- [94] ries. How was the daily record—in other words, from what did you draw your figures as to the lumber?

A. We made notes at the time in a book, and at the end of the week it was summarized as cost.

Mr. Moore: What was that last answer?

(The reporter read the answer.)

Mr. Wrigley: Q. As to the charges here for lumber, then, that is taken from your notes, and you charged only the lumber that was used for the interior falsework in these figures?

A. That is right.

Q. Now, as to the steel, how was the record as to the steel kept in the first instance?

A. I don't follow you on the first instance.

Q. Well, before you made up the summary, where was the record of the steel kept?

A. It was kept in a book, the same as the lumber. All materials were kept daily.

(Testimony of Loren Hunt.)

Q. And this summary was made up from those detailed statements that appear in that book as to the lumber and the steel?

A. That is right.

Q. About the records as to the welding and the welding rods? A. That is the same.

Q. And the bolts and the nuts, and the nails?

A. That is the same.

Mr. Wrigley: At this time, if the Court please, we offer in evidence this which has heretofore been marked "Defendants' Exhibit K For Identification," not as proof of anything other than the fact that this is a correct summary made up by him of his detailed charges against them.

Mr. Moore: We have no objection.

(Defendants' Exhibit K For Identification was thereupon [95] admitted in evidence and marked "Defendants' Exhibit K.")



(Testimony of Loren Hunt.)

## DEFENDANT'S EXHIBIT K

## TEMPORARY SUPPORTS

FOR REINFORCEMENT STEEL, TEMPLETS, SPACERS, ETC.,—PIT RIVER BRIDGE

Piers	Labor	Insurance	Equipment	Lumber	Steel	Oxy, Acety. & Weld. Rods	Bolts, Nuts, Etc.	Nails
1	\$ 688.75	\$ 95.96	\$ .....	\$ 23.48	\$ 57.54	\$ 44.50	\$ .....	\$ .....
2	4,693.12	654.29	10.85	630.94	1,629.84	144.19	327.34	49.44
3	11,556.52	1,608.75	98.50	2,370.26	1,451.70	570.80	874.37	64.89
4	7,301.54	1,023.55	92.80	2,043.28	1,776.04	357.02	491.66	64.63
5	2,152.26	301.17	25.20	230.18	417.16	135.78	257.51	18.54
6	2,123.73	302.26	31.20	96.17	194.55	62.95	129.64	10.30
7	1,920.49	264.51	.....	285.18	207.83	51.91	173.21	12.36
Abt. No. 1	2,545.40	310.74	49.50	.....	369.18	11.10	.....	.....
Total	\$32,981.81	\$4,561.23	\$308.05	\$5,679.49	\$6,103.84	\$1,378.25	\$2,253.73	\$220.16
GRAND TOTAL	.....							
10% Supervision and Incidentals	.....							
	.....							
	.....							
Miscellaneous Charges:	.....							
Moving and Repairs to Boom	.....							
Additional Miscell. Charges	.....							
TOTAL	.....							

\$61,112.62

[Endorsed]: Filed 4/9/43.

(Testimony of Loren Hunt.)

Mr. Wrigley: Q. Now, Mr. Hunt, in addition to the charges made against the Soule' Steel Company for interior falsework or framework, were there other charges made against Soule' Steel Company?

A. There were.

Q. Did you prepare a list of those charges?

A. Yes.

Q. Have you a copy of that list with you?

A. No, you have it in your hand.

Q. No, this is my copy.

A. In that folder.

Q. Mr. Hunt, calling your attention to a tabulation which I have marked roughly, "C" in pencil, was this tabulation made up by you?

A. That was made up from information that I furnished the San Francisco office.

Q. Where were the records kept on these various items? How were they kept before the tabulation was made?

A. All the records were originally taken from the daily summaries.

Q. And that which I have listed on "C" is the charges that you have made against Soule' for what type of work?

A. In reference to moving their boom, Chicago boom, the derricks, and work in connection with that.

Q. Showing you next what I have marked "D", tell us what that sheet was made up from.

A. This is made up from various incidental charges.

(Testimony of Loren Hunt.)

Q. Have you checked this list over and the descriptions—for instance, we will say 9/30/40 Repair boom, Pier 2, \$128.86—in each case you have checked and verified that you have made such a charge against the Soule Steel for that item on that date?      A. Yes.

Mr. Wrigley: We offer C and D as one exhibit, Defendants' Exhibit next in order. [96]

(The documents were received in evidence and marked Defendants' Exhibit U.)

Mr. Wrigley: That is all.

### Cross-Examination

By Mr. Moore:

Q. Mr. Hunt, approximately what date did they start work on Abutment No. 1?

A. Will you clarify that and say who was "they"?

Q. The Union Paving Company.

A. We began in December.

Q. What was the first work performed by the Union Paving Company?

A. The first work was excavation.

Q. That excavation, I assume, went down to levels established by the Government Engineers, is that correct?      A. That is right.

Q. Drawing your attention to Defendants' Exhibit N, this was a hillside on the right-hand side of Section FF, was it not?

A. That is right.

Q. And that was excavated down leaving steps

(Testimony of Loren Hunt.)

in the hill, or rock steps on the right-hand side, is that correct?

A. Those we did not—the final excavation did not look like that—rugged.

Q. The section on the left-hand side of this drawing was excavated down to the base, here, is that correct? A. That is right.

Q. And after you had excavated, what was the first step that took place there in the construction?

A. The first step was to build the forms.

Q. Where were those built?

A. Right in here.

Q. Who built those?

A. Union Paving Company.

Q. And then what was the next step?

A. The Soule Steel put dowels in.

Q. The dowels were this shape, and they came down here, is [97] that correct?

A. That is right. Permission was given to dowel that.

Q. And then the steel was put in. Were these dowels extending up above—what were they, about 10 feet high above base?

A. Here it is—11 foot 6 inches.

Q. 11 foot 6 inches from the base of the excavation, is that correct? A. That is right.

Q. How were those dowels seated on the base, there?

A. They were seated, resting on dough-balls, or concrete blocks.

Q. Those dough-balls were installed by whom?

(Testimony of Loren Hunt.)

A. Soule Steel.

Q. And the steel uprights or dowels were installed by whom?      A. Soule Steel.

Q. How were those held in place at the time?

A. They are usually—usually a stringer goes down through there, or a timber that they tie it to.

Q. As a matter of fact, they practically stand on their own base, do they not?

A. That is right, that was just to hold it from swaying.

Q. And that was supported by braces put in by Soule, is that correct?

A. I imagine. I don't know.

Q. And then there was a pour, and this space was poured, is that correct?

A. That is right.

Q. Who poured that?

A. Union Paving Company.

Q. So we have this with these dowels sticking up, is that correct?      A. That is correct.

Q. Was that same process followed on the right-hand side?

A. That is right. This was blocked off.

Q. What was the next step in construction after that? You have the dowels sticking up. What was the next step?

A. Building the forms. [98]

Q. By the forms you mean this outside form, here?      A. And the inside form.

Q. That was done by whom?

A. The Union Paving Company.

(Testimony of Loren Hunt.)

Q. This form that goes around and makes the arch, how was that form supported?

A. We had ribs cut direct to that shape, placed, and it was supported by timber falsework.

Q. In other words, the inside, here, was supported by timber falsework supporting this arch, is that correct?      A. That is right.

Q. And then this side form wall was put up, is that correct?      A. That is right.

Q. And that was supported, this side wall was supported by cross timbers to the arch, wasn't it?

A. It was not supported, no. This had two booms free.

Q. How was this side wall——

A. It was braced.

Q. After this arch had been put in and this wall put in, what was the next step in construction?

A. We built this wall, too.

Q. You built that wall; that was another form. After that what was the next step?

A. Placing the reinforcing steel.

Q. Well, then, Soule came in after these side forms had been put in and this arch with the interior bracing and this form on the right-hand side, and Soule came in and placed the reinforcing steel, is that right?      A. That is right.

Q. These were bent so that they came across the top of the arch, and these lines lapped at the top, is that correct?      A. That is right.

Q. And then they were welded to the dowels?



(Testimony of Loren Hunt.)

A. Not welded.

Q. How were they fastened? A. Lapped.

Q. Lapped to the dowels?

The Court: Q. What do you mean by "lapped"?

A. One part [99] went by the other 50 inches.

Mr. Moore: Q. And then the vertical bars were placed here, is that correct, along the side?

A. That is right.

Q. And how were they held?

A. Those vertical bars supported more or less themselves. They were tied more or less to the form.

Q. We have that wooden arch in and the side walls, and the reinforcing steel across the top of the arch. What was the next step?

A. It was necessary to place this horizontal steel.

Q. Then the horizontal steel was placed across the top of the arch, is that right?

A. That is right.

Q. How was that supported?

A. It was supported by this indication with steel (indicating).

Q. This steel—— A. Yes.

Q. And they were based on the ground, were they? A. That is right.

Q. Those are the railroad irons that you refer to, is that correct?

A. Railroad iron, structural steel shakes.

(Testimony of Loren Hunt.)

Q. You have the cantilever across the top here. What was the next step?

A. The next step is to place our runways.

Q. Where were your runways?

A. On the top.

Q. Now, on one side of this or the other you erected a hoisting tower, did you not?

A. Directly in front.

Q. How high was that hoisting tower?

A. It was above the height of this.

Q. Probably about 75 feet, was it not?

A. Approximately, yes.

Q. Then from the next abutment down the hill is Abutment 2, is it?

A. That is right.

Q. And then Pier 1?

A. Pier 1.

Q. And from this same hoisting tower there was a trestle or run- [100] way built to Pier 2—I mean to Abutment 2—and then to Pier 1, is that correct?

A. That is right.

Q. And this hoisting tower, then, was used for the purpose of hoisting the concrete up there to deliver it into hoppers?

A. That is right.

Q. And from that point, through the medium of buggies, over the trestle work, and on this, over runways, the concrete was poured on Abutment 1, on Abutment 2, and Pier 1, is that correct?

A. That is right.

Q. Out of that one tower.

A. That is right. This tower, by the way—we used the tower, yes. That is right.

(Testimony of Loren Hunt.)

Q. Having gotten this in, then the concrete was poured, is that right? A. That is right.

Q. And the weight of the concrete would fall on this arch, too, would it not?

A. That is right.

Q. Now, the lumber you put in here you did not charge the Soule people for, is that correct?

A. No, no charge.

Q. You did charge them for this upright iron, is that correct? A. That is true.

Q. Did you charge them, aside from acetylene and that, for any other material that went into Abutment 1? A. No.

Q. How much iron went in there, do you know?

A. Oh, I would say maybe nine ton of rail, maybe ten ton of rail.

Q. Have you any figures? A. Yes.

Q. Will you get them and tell us how many tons of rail or whatever it was that went in there, and at what price you charged it?

A. I haven't got those here.

Mr. Wrigley: Q. You mean you haven't got them here in court?

A. Yes.

Mr. Moore: Q. Will you have them this afternoon? [101] A. Yes. I will get them.

Mr. Wrigley: May I say, so we can get clear, these statements that you will bring out bear not only on No. 1, but the steel in all the piers and abutments that you charged against them?

The Witness: That is right.

(Testimony of Loren Hunt.)

Mr. Moore: Q. I call your attention to Exhibit K, which is a summary of your charges. The only material that you charged was the steel other than the rental of some equipment. There was some acetylene and one thing and another, is that correct?

A. That is right.

Q. You charged \$369.18 for this steel, and that is the steel you just described, is that right?

A. That is right.

Q. What was the rental of the equipment that you charged?

A. Well, rental of equipment—we used different pieces of equipment. We have a normal rate. We charge ourselves for that operation, which includes principally the operating cost.

Q. Well, that \$49.50, what is that? What equipment is that?

A. For instance, it might be a truck.

Q. Do you know what it is?

A. I can't tell you right off now.

Q. Will you get that information, please? Now, you have \$2545.40 for labor. What labor was that that you make a charge of \$2545 for?

A. That was labor turned in by the forces in the field.

Q. What was that labor used for, and what portion of the erection?

A. The erection of the falsework.

Q. What falsework?

A. Falsework—that, in the start of the job, is not clear.

(Testimony of Loren Hunt.)

Q. Well, coming back to this diagram which is Exhibit M, was any of that labor devoted to the forms, the placing of the forms [102] which are on the outside? A. Not any of the forms.

Q. Was any of that labor devoted to putting in the arch?

A. At that time we had falsework and runways accumulated together, and it might be, but there was an attempt to separate.

Q. It did not take \$2545 worth of labor to put up these iron uprights that are in the mass, did it?

A. I couldn't say.

Q. You made up these figures, did you not?

A. That is right.

Q. Haven't you any compilation of what that labor was devoted to which you attempt to charge us \$2545 for?

A. That was to put up the falsework.

Q. What falsework, again?

A. Well, it isn't the entire charge of the falsework; it is a portion of the falsework charge.

Q. I will come to something else. When this job was started there was a chart of accounts prepared by someone in the home office here in San Francisco, was there not? A. Yes.

Q. I will hand you a photostatic copy of the chart of accounts and ask you to examine that and tell me if that is the same chart of accounts which this work was started under (handing a document to the witness). A. Yes.

Q. You recognize that, do you? A. Yes.

(Testimony of Loren Hunt.)

Q. In keeping your cost accounts at the beginning of this job, you used the signals or indicia that is on this chart of accounts, is that right?

A. Yes.

Mr. Moore: We will offer this chart of accounts, your Honor, in evidence and ask that it be marked with a proper number.

(The document was marked "Plaintiff's Exhibit 16.")

### PLAINTIFF'S EXHIBIT No. 16

#### CHART OF ACCOUNTS (Revised) PIT RIVER PROJECT—CONTRACT No. 281

Account No.

01	General Overhead	
01-1	Super. & Assistants	Salaries
01-2	Engineers	Salaries
01-3	Accountant & Timekeepers	Salaries
01-4	Pickup men	Labor only
01-5	Watchmen	Labor only
01-6	Autos & Pickups—Expense	
01-7	Field Office Expense	
01-8	Expense Accounts	Supervisory
01-9	Engineering Expense	Misc. Labor, blue- prints, supplies, etc.
01-10	Road, Property Tax & Misc. Taxes & Insurance (Show what)	
01-11	Automotive—Licenses & Insurance	
01-12	Erect & Repair—Office and Sheds	
01-13	Rentals—Land	
01-14	Miscellaneous	Show what
02	Plant and Equipment	
02-1	Master Mechanic	Salary
02-2	Electricians & Helpers	Salaries
02-3	Grease Monkeys	Labor
02-4	Move Equipment In (all charges)	
		Show kind of equip- ment moved



(Testimony of Loren Hunt.)

## PIT RIVER CHART OF ACCOUNTS—(Continued)

Account No.

- 02-5 Move Equipment Out (all charges)  

Show kind of equip-  
ment moved
- 02-6 Shop Work & Repairs—Plant & Equip. (all charges for repairs to equipment charged to job costs at hourly rate Show kind & number of equipment).
- 02-7 Shop Work & Repairs—(Not chargeable to above or other items).
- 02-8 Electric Plant Setup
- 02-9 Electric Plant Repairs & Maintenance (except 02-2 above)
- 02-10 Power Charges—(Bills from power co. for energy charge)
- 02-1 Water System—(Installation, repairs & maintenance (all charges).
- 02-12 Air Lines—(Installation, repairs & maintenance (all charges).
- 02-13 Concrete Plant—  
Bunkers—Erection
- 02-14 Concrete Plant— ) Repairs & operating costs  
Batcher & Conveyors ) to be charged at hourly  
—Erection ) rate.
- 02-15 Concrete Plant—  
Silo at Job
- 02-16 Concrete Plant—Silo at Redding (All repairs & operating costs charge to item "Unload & haul cement).
- 02 Equipment Purchases (Property account)
- 03-1 Excavation Equipment
- 03-2 Concrete Equipment (Show if for batcher, silo, etc.)
- 03-3 Automotive Equipment (Autos and trucks)
- 03-4 Shop tools and equipment
- 03-5 Other Equipment
- 04 Roads
- 1 Clear Right of Way
- 1-1 Cut trees and brush

(Testimony of Loren Hunt.)

## PIT RIVER CHART OF ACCOUNTS—(Continued)

## Account No.

- 1-2 Burn
- 1-3 Pull stumps
- 2 Common Excavation
  - 2-1 Bulldozers & carryalls. Show cu. yds. done
  - 2-2 Shovel or dragline. Show cu. yds. done
  - 2-3 Haul
  - 2-4 Miscellaneous
- 3 Rock Excavation (Labor & Equipment only)
  - 3-1 Drill & Shoot
  - 3-2 Mucking (Show cu. yds. moved)
  - 3-3 Cleanup
  - 3-4 Bracing
  - 3-5 Miscellaneous (Show what)
- 3A Rock Excavation (Materials only)
  - 3a-1 Powder & shooting supplies (no steel—see 2-3)
  - 3a-2 Lumber, nails, etc. for bracing.
- 2-3 Excavation (Tools, Drills, etc.)
  - 23-1 Drill steel & gads (includes labor sharpening)
  - 2-3-2 Misc. Grading tools & supplies (not in property account)
  - 2-3-3 Repairs—Misc. grading tools (not on hourly rate)  
Includes all costs for repairs.
- 4 Backfill
  - 4-1 Cat Work (Bulldozer & carryall)
  - 4-2 Shovel or dragline work
  - 4-3 Haul—Trucks
  - 4-4 Miscellaneous
- 5 Compact Backfill
  - 5-1 Machine Compaction (quantity)
  - 5-2 Hand Compaction (quantity)
  - 5-3 Miscellaneous
- 6 Dry Rock Paving
  - 6-1 Haul
  - 6-2 Place
- Conc. A Haul Aggregates—From Redding to Bunkers
  - a-1 Trucks & Drivers—hauling. (Show tons hauled)
  - a-2 Foreman
  - a-3 Flagmen
  - a-4 Miscellaneous

(Testimony of Loren Hunt.)

PIT RIVER CHART OF ACCOUNTS—(Continued)

Account No.

- Conc. B    Unload & Haul Cement—From Redding to Job
  - b-1    Unload cars & load trucks (Redding)
  - b-2    Redding Silo Expense. (Repairs, power, etc.)
  - b-3    Trucks & drivers—hauling. (Show barrels hauled)
  - b-4    Miscellaneous
- Conc. C    Form Materials
  - c-1    Lumber
  - c-2    Plywood and hardwood
  - c-3    Nails and hardware
  - c-4    Miscellaneous
- Conc. D    Falsework & Runways (Materials only)
  - d-1    Lumber
  - d-2    Nails and hardware
  - 4-3    Miscellaneous
- Conc. E    Sundry Concrete Tools and Supplies
  - e-1    Tools and supplies purchased
  - e-2    Repairs to concrete tools
- 7          Concrete in Abutments
  - 1          Forming (Except materials). Show sq. ft.
  - 2          Strip Forms and move
  - 3          Build Falsework (except materials)
  - 4          Build Runways
  - 5          Batch
  - 6          Haul to Mixer
  - 7          Mix
  - 8          Place Show cu. yds.
  - 9          Cure
  - 10         Sand Blasting. Show sq. yds.
  - 11         Finish
  - 12         Move Concrete equipment
  - 13         Miscellaneous
- 8          Concrete in Piers
  - Detail 1 to 13 as above.
- 9          Piers No. 1-7. Above Top of Bases
  - Detail 1 to 13 as above.
- 10         Piers 8-9-10
  - Detail 1 to 13 as above.

(Testimony of Loren Hunt.)

## PIT RIVER CHART OF ACCOUNTS—(Continued)

Account No.

- |    |                                    |
|----|------------------------------------|
| 11 | Reinforcing Steel (Sub Contracted) |
| 12 | Welding 2" Bars (Sub Contracted)   |
| 13 | Cooling Concrete                   |
| 1- | Operate pump and pipe line         |
| 2- | Grouting                           |
| 3- | Miscellaneous                      |
| 14 | Install Metal Tubing and Fittings  |
| 1- | Haul                               |
| 2- | Place                              |
| 15 | Special Concrete Finish            |
| 1- | All operations                     |
| 16 | Waterproof Concrete Surface        |
| 1- | Haul                               |
| 2- | Apply                              |
| 17 | Install Metal Expansion Joints     |
| 1- | Haul                               |
| 2- | Place                              |
| 18 | Place Anchor Bolt Welds            |
| 1- | Haul                               |
| 2- | Weld                               |
| 3- | Place                              |
| 19 | Install Metal Conduits             |
| 1- | Haul                               |
| 2- | Place                              |
| 20 | Install Electric Cables            |
| 1- | Haul                               |
| 2- | Place                              |
| 21 | Const. Sewer Pipe                  |
| 1- | Haul                               |
| 2- | Excavate                           |
| 3- | Lay                                |
| 4- | Backfill                           |
| 22 | Install Misc. Metal Work           |
| 1- | Haul                               |
| 2- | Place                              |

[Endorsed]: Filed 4/9/43.

(Testimony of Loren Hunt.)

Mr. Moore: Q. I will call your attention to Accounts 7-1, Concrete and abutments, with thirteen breakdowns under this No. 7.

A. That is right.

Q. No. 1 being Forming, 2 Strip forms, 3 Build falsework, 4 Build [103] runways, and Batch, and so on. I will also call your attention to Item No. 1, which is Reinforcing steel, subcontract. At the inception of this work was any of this labor or materials charged by you under Item 11?

A. No.

Q. It was all charged under Item 7 to Concrete and abutments, is that correct?

A. That is right.

Q. Who instructed you as to how you should make charges there at the inception of the job?

A. It was agreed between Mr. Cochrane and myself.

Q. Mr. Cochrane and yourself and Mr. Dowling?

A. And Mr. Dowling.

Q. In other words, when you opened up your cost books, you used this chart of accounts and segregated your costs in accordance with the instructions by Mr. Dowling, is that correct?

A. And Mr. Cochrane.

Q. And none of this labor or materials were charged to Item 11, which is Reinforcing steel, is that correct?

A. That is right.

Q. And all of it was charged to Item 7, being Concrete in abutments, is that correct?

A. That is right.

(Testimony of Loren Hunt.)

Q. And that form of charge, so far as Abutment No. 1 is concerned, continued throughout the construction of Abutment No. 1, is that correct? A. That is right.

Q. When was Abutment No. 1 finished, completed?

A. The concrete portion of it, or when it was turned over to the Government? I think it was turned over to the Government in July.

Q. When was the actual work finished?

A. It was back-filled in connection with it, you know, and I think the last pour was in April.

Q. That is April, 1940, is that correct?

A. That is right.

The Court: April, 1940. [104]

Mr. Moore: April, 1940.

Q. Up to that time all labor and materials had been charged to items other than Reinforcing steel, is that correct? A. That is right.

Q. And had been charged to Pouring concrete, or other items of that character?

A. That is right.

Q. At the time it was turned over to the Government, those accounts still, cost accounts, still remained in the same condition, is that true?

A. That is right.

Q. And they did remain in that condition until what time? A. In October, 1940.

Q. In the latter part of October, 1940, is that correct?

A. We were instructed, I think, in a letter from



(Testimony of Loren Hunt.)

Mr. Lawton to change those accounts somewheres around—I don't think it was quite the latter part, because the thing was all set up and we were going on the theory——

Q. Have you that letter?           A. No.

Mr. Moore: Will you produce that letter from Mr. Lawton? If you will look for it, I will proceed.

Q. During the progress of the construction of Abutment No. 1, you saw Mr. Stevens practically daily, did you not?

A. I saw Mr. Stevens, yes.

Q. Did you at that time in any way suggest to him that it was his obligation to furnish the labor and put up any falsework?

A. That was Mr. Cochrane's position. He was superintendent.

Q. I said, did you do so?           A. I did not.

Q. There was no suggestion made by you personally to Mr. Stevens as a representative of Soule that they were obligated to place or furnish the labor to place the falsework?

A. Not on Abutment 1. [105]

Q. At the completion of the job, I mean of Abutment 1, did you render any bill or statement to Stevens that Soule was obligated to pay for the cost, the labor cost on that abutment?           A. No.

Q. When it was finally turned over to the Government and accepted, did you in any way notify Stevens or any other representative of Soule Steel

(Testimony of Loren Hunt.)

Company that there was a charge against them for labor or materials furnished in Abutment 1?

A. What date were you referring to?

Q. I am saying July. A. 1940? No.

Q. You say you received a letter from Mr. Lawton sometime in October. Who is Mr. Lawton?

A. Mr. Lawton was the President of Union Paving Company at the time.

Mr. Moore: I have asked counsel to produce it. They don't seem to have it. I assume secondary evidence may be produced.

Q. What was the substance of that letter, Mr. Hunt?

A. It was just instructing me to charge all falsework of that nature to Account 11.

Q. To Account 11?

A. Yes, reinforcing steel.

Q. Up to that point, not only with regard to Abutment 1, but with regard to these other piers with respect to which a back charge is now attempted to be made, the same is true of all of them: They have all been charged to Pouring concrete under the schedule of charges, and none charged to reinforcing steel, is that correct?

A. It is charged to that other account, yes.

Q. It was charged to that other account, and it was sometime in October—can you fix the date in October? A. No.

Q. Maybe I can refresh your memory. There was a man killed on the boom up there on October 15th, I believe. Was it after his death?

(Testimony of Loren Hunt.)

A. I believe it was right at that time. It might [106] have been before.

Q. Then after that you started changing your method of charging on these piers, is that correct?

A. That is right.

Q. Did you do anything else? I mean did you go back to attempt to reset the charges, if we may term it that, on the work that already taken place? A. Yes.

The Court: It is time to adjourn. We will take an adjournment until two o'clock.

(A recess was here taken until 2:00 o'clock p. m.) [107]

Afternoon Session

2:00 O'clock P. M.

Mr. Moore: With your Honor's permission, due to the fact that he has to return, I would like to put Colonel Mahon on out of order, and tie his testimony up later. It will be very short.

The Court: Very well.

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ROSS L. MAHON,

called as a witness for Plaintiff; sworn.

The Clerk: Q. Will you state your name?

A. Ross L. Mahon.

(Testimony of Ross L. Mahon.)

Direct Examination

By Mr. Moore:

Q. You are at present a Lieutenant Colonel in the United States Army, are you?

A. That is correct.

Q. In 1939, in the latter part of the year, were you employed by the Soule Steel Company?

A. I was.

Q. You are an engineer, are you, Colonel?

A. Yes, sir.

Q. In what capacity were you employed?

A. Sales engineer for the Soule Steel Company.

Q. In that connection did you have various conferences or meet with Mr. Dowling or other officials of the Union Paving Company?

A. On several occasions, yes.

Q. Directing your attention to the month of October, 1939, were you present at a conference between Mr. Soule and Mr. Dowling?

Mr. Wrigley: Just a second, please. I want to object to this as irrelevant, incompetent and immaterial. The parties in this case entered into a formal written contract as of January 6, 1940 that superseded all prior negotiations, discussions, offers and everything else, and anything they may have agreed [108] prior to that date was carried into that contract and cannot be admissible under the California Civil Code, Section 1625.

Mr. Moore: I did not want to argue that, if I could take this statement from the Colonel at this

(Testimony of Ross L. Mahon.)

time. It will be very short, and then we can argue it later.

The Court: I will allow it subject to a motion to strike.

The Witness: Will you ask the question again?

(The reporter read the question.)

A. To the best of my recollection, on October 4th, the day before the bid opening, I went up by airplane at noon to Sacramento, where the bids were to be opened, engaged rooms for myself and Mr. Soule and one of our other men, and spent the afternoon in ascertaining what possible contractors had representatives in Sacramento.

Mr. Wrigley: May it please the Court, to save time, may it be understood that my objection goes to the entire line of examination without repeating it continuously?

Mr. Moore: It will be so stipulated.

A. After Mr. Soule arrived in town we had occasion to call on Mr. Dowling, or his representatives—my recollection now is that it was Mr. Dowling, himself, we talked to—to find out whether he was going to bid and wanted our price, and we were told that he did.

Mr. Moore: Q. When was that?

A. That was the late afternoon or the early evening of October 4th. As I recall the dates, the bid opening was the 5th, and this was the day before.

Q. Who was present at that meeting?

A. Mr. Soule and myself were there, and Mr.

(Testimony of Ross L. Mahon.)

Dowling, and I think one other. Now, that one other may be Mr. Hunt—I have been away from that place [109] for quite a while, and away from the office—or it may have been one of his other men.

Q. You do not remember who?

A. I don't remember the other one.

Q. Where did the meeting take place?

A. In Mr. Dowling's room, I think.

Q. At the Hotel Senator?

A. At the Hotel Senator, Sacramento.

Q. That was in the late afternoon or early evening. Can you tell us what was said at that meeting?

A. Well, in general, the question was asked whether or not the Union Paving Comapny were going to put in a bid. I had been under the impression, from my previous contact with them in San Francisco that they were going to do so, but nobody admits those things until the last minute.

Q. Regardless of that, what was said in that regard?

A. The question on our part, "Are you going to bid?" And receiving an affirmative reply, "Do you want our bid on the steel?" And my recollection the answer was in the affirmative.

Q. Then what was said, if anything?

A. At that time, I can't say whether we discussed the thing in great detail, but I know in regard to all the other contractors——

Q. Don't go to other contractors.



(Testimony of Ross L. Mahon.)

A. All right, sir.

Q. Do you recollect definitely what was said?

A. Do you want my answer to the best of my recollection?

Q. Yes.

A. To the best of my recollection, we pointed out the difficulty in preparing an intelligent bid unless we knew how far the contractor wanted us to go, and, to the best of my recollection, Mr. Dowling stated that he wanted us to include everything connected with the installation of the steel.

Q. What happened after that?

A. We left after telling him we would see him later with our bid. [110]

Q. And did you see him later in the evening?

A. A second call was made later.

Q. Approximately what time was that?

A. I should say at least 10:00 or 11:00 o'clock in the evening, perhaps a little later, and I base that on the fact that Mr. Dowling was in bed at the time.

Q. Was anybody else there besides yourself and Mr. Soule and Mr. Dowling?

A. To the best of my recollection, nobody was in that room when we talked this thing, except Mr. Dowling, Mr. Soule, and myself.

Q. Now, will you relate the conversation as nearly as you recollect it?

A. A bid was presented to Mr. Dowling in which we quoted a price—my recollection is that it was \$33.80 a ton—on the reinforcing steel for this Pit

(Testimony of Ross L. Mahon.)

River Bridge, installed, including, among other things, the cost of the unsupporting structure for same, that being in accordance with his expressed desire previously.

Q. What was his answer to that, if anything?

A. Well, he accepted the bid, and I think he made no reply at the time. I asked him how it looked.

Mr. Wrigley: I ask that that be stricken, "he accepted the bid."

Mr. Moore: That may go out.

The Court: That may go out.

The Witness: What is that?

The Court: I am speaking to counsel.

Mr. Moore: Q. What did Mr. Soule say, if anything, at that time—I don't mean Mr. Soule, I mean Mr. Dowling.

A. I can't quote his words, nor do I recollect exactly what was said, except that there was nothing more to be discussed. As I recall it, the thing was read over. I believe it was some [111] kind of a written bid that was left with him, and pointing out again that the thing was complete as he had asked for it. We did ask him how we stood in price.

Q. What was said to that?

A. Well, the answer was noncommittal. At that stage any answer would not have been——

Mr. Moore: That is all.

Mr. Wrigley: At this time I want to move to

(Testimony of Ross L. Mahon.)

strike out the entire testimony of this witness on the ground that it is an attempt to vary the terms of a written contract which the parties formally entered into at a later date. Section 1625 of our Civil Code of California provides that the execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning matters which preceded or accompanied the execution of the instrument.

The Court: I will allow it to go in so we can have a record on the ground of the witness not being available, and it is all going in subject to your motion to strike and your objection, and I will give both sides an opportunity to examine into the matter fully.

Mr. Wrigley: It places me in the embarrassing position that if the evidence, we will assume, is determined by the Court admissible, then I won't have an opportunity, after the Court rules on it, to cross-examine this witness.

The Court: You can cross-examine him.

Mr. Wrigley: It would invalidate the objection.

The Court: Not necessarily: if I strike it out, it will all go out.

#### Cross-Examination

By Mr. Wrigley:

Q. Now, you fix that date as being in Sacra-  
[112] mento on what date?

A. I believe I stated, to the best of my recollection, October 4th.

(Testimony of Ross L. Mahon.)

Q. Do you remember the day of the week?

A. No, I do not.

Q. Do you remember whether the bids had gone in yet to the Federal Government?

A. You mean the contractors' bids?

Q. Mr. Dowling's or Union Paving Company's bid.

A. We don't know when the bids go in. We know when they are opened by the Government. They were opened the next morning.

Q. Then, according to your recollection, the bids were opened on October 5, 1939?

A. That is my recollection.

Q. You stated, I believe, that Soule Steel Company made some kind of an offer or bid to Union Paving Company in writing?

A. I believe it was in writing. I don't remember the form. At that time practically all of our bids on a thing of that kind were in writing.

Q. Have you had occasion at any time since then to see a copy of that bid or anything? A. Yes.

Q. In writing?

A. Not in writing, typewritten.

Q. Typewritten copy of a bid of \$33.80?

A. No, the price was not given.

Q. The price wasn't given? A. No.

Q. How recently did you see that?

A. Within the last few days.

Q. What was the date of that bid?

A. I can't tell you what date was on the bid.

(Testimony of Ross L. Mahon.)

Q. Would you recognize a copy of it if you saw it?      A. I think I would.

Q. I will show you a writing and ask you if that is the bid.

A. No, that is dated December 11th.

Q. The one that you had was dated what date?

A. Well, around the time of this bidding. [113]

Q. Who had the bid of \$33.80 that you refer to when you saw it last?

A. The bid of \$33.80 was not in writing. It was a verbal bid. Perhaps at the time I translated this bid into this written form.

Q. How recently do you say you saw it?

A. Within the last few days. I say I saw the bid. I didn't see a price in the bid.

Q. Addressed to Union Paving Company?

A. I can't swear to that.

Q. Who had it when you saw it?

A. It was in the files of the Soule Steel Company.

Mr. Wrigley: I would ask that counsel produce that writing.

Mr. Moore: I think that is what he saw (producing a document). He went through the file.

Mr. Wrigley: Q. Is this the writing to which you refer (handing a document to the witness)?

A. That is it.

Q. You notice that that is the original, don't you?      A. Yes.

Q. Produced by Soule's office. Is that the original that you saw in the last few days?

(Testimony of Ross L. Mahon.)

A. Let me explain. When those bids are made, they are made up with an original and several copies, and when I handed out the copies used as a bid—you see, instead of being mimeographed this one apparently was typewritten.

Q. I will ask you, was a copy of this bid delivered in any way to Mr. Dowling or any other person on behalf of the Union Paving Company at Sacramento?

A. Well, my recollection is that it was, because in the normal case no man wants to accept a single bid on a thing of that magnitude; something is put out in writing, and the name would have been filled in in the top; perhaps not. You see, that is not addressed to anyone in particular.

Q. I will ask you the question, Do you know whether a copy of this [114] bid was delivered to Mr. Dowling, or any other representative of the Union Paving Company at Sacramento?

A. I said to the best of my recollection, yes.

Q. Who was present when it was delivered?

A. Again, Mr. Dowling, Mr. Soule and myself.

Q. What price was written in here, if any?

A. That I cannot say. I heard the price quoted by Mr. Soule.

Q. After October 4, 1939, did you ever call at the office of Union Paving Company in San Francisco?

A. Several times.

Q. How many times?

A. I can't answer that question definitely. I



(Testimony of Ross L. Mahon.)

would say somewhere between once and three times a week for a period of a few weeks.

Q. Outside of the one occasion on Saturday, October 7th, in company with Mr. Soule, were you ever in Mr. Dowling's office in San Francisco and seen Mr. Dowling?      A. Several times.

Q. How many times did you see him?

A. I said before I can't say exactly how many times. I didn't see him every time I called at the office. There were occasions when I was invited to come into his office and occasions when he wasn't there, and I talked to someone else, and I do not think there were many occasions when Mr. Dowling was there that I was not allowed to come in and talk to him.

Q. Did you talk to Mr. Dowling in his office in San Francisco more than the once on Saturday, October 7th?      A. Yes.

Q. Who was present?

A. In those other instances, just Mr. Dowling and myself.

Q. In which room down there did those conferences take place?

A. Well, you come in the entry and there was a desk and a gate on the left, as you came in the door, and you go in the gate and turn to the right, go along the wall, and there was a door then [115] to the right which led to Mr. Dowling's office. That is the way I remember getting there.

Q. These were in Mr. Dowling's—

(Testimony of Ross L. Mahon.)

A. Private office.

Q. Private office?           A. That is right.

Q. Only you and Mr. Dowling were then present?  
A. Yes, on several occasions.

Q. Now, going back to this meeting that you say took place in Mr. Dowling's room at Sacramento, and you fix as being present Mr. Dowling and somebody else on behalf of that company, Mr. Soule and yourself——

A. Are you talking about the first meeting or the second?

Q. The first meeting that you testified those four were present at. What was said about the bids of other contractors on the reinforcing steel?

A. Frankly, I do not recall any discussion of that. First of all, it was too early in the game for us to hope to get any information as to what someone else was doing.

Q. The bids were going to be opened the next day, weren't they?           A. Right.

Q. Mr. Dowling's bid of the Union Paving Company was already in, wasn't it?

A. No, not as far as I knew. Those bids normally do not go in until the last minute. Many of them do not go in until the next morning. They are opened at the same time.

Q. Did Mr. Dowling say something in your presence about other bids that he had from other contractors to erect that reinforcing steel and do the welding?

(Testimony of Ross L. Mahon.)

A. You say, "anything about—" can you explain that a little more so I will be sure to give you the right answer?

Q. I cannot give you the answer.

A. I am not asking you for the answer——

Q. Did he say anything about the other bids?

A. Did he say any- [116] thing?

Q. Yes.

A. The only thing he might have asked us——

The Court: Not what he might have asked you.

A. I can't answer the question. I don't remember.

Mr. Wrigley: Q. Didn't Mr. Dowling say to Mr. Soule in your presence that he had other contractors who were submitting and had submitted figures for doing the welding and erecting the reinforcing steel at that time?

A. He may have said that. We took that for granted.

Q. Didn't he actually tell you that he had other bids? A. He may have. I can't say.

Q. Didn't he also tell you the prices that others had bid?

A. He may have also done that, but that would have been accepted, as we might say, with a grain of salt, because actually that does not mean a great deal.

Q. On that date, or prior thereto, had Soule Steel Company figured out the costs in connection with this work?

(Testimony of Ross L. Mahon.)

A. I believe they had, but I had nothing to do with figuring the cost.

Q. What were your duties at that time?

A. Selling.

Q. In other words, you were selling them the idea of getting the contract, is that the idea?

A. Not necessarily selling an idea. I was working out the selling of the steel, the job.

Q. Well, they were not furnishing any steel on this job, were they?

A. No, but selling the contract for placing the steel.

Q. And you do not know on that date anything about the price or cost?

A. I believe I said to the best of my recollection the price quoted on that day at the second session was \$33.80 a ton.

Q. Now, that price that you stated, of \$33.80, according to your recollection, was for what work?

A. Well, the work of placing the reinforcing steel and the other things that went with it. [117] I would hesitate to list them in detail from memory, but I know they did include one item, which was the supporting structure for the steel, because that had been discussed on several occasions with other people during the day, and it was something that was very vital in this contract, in the price, in the determination of the price.

Q. And that price of \$33.80 was the combined price, wasn't it, for raising the reinforcing steel,

(Testimony of Ross L. Mahon.)

supporting the reinforcing steel, and welding the reinforcing steel?

A. Well, I can't state as to the welding. The letter I just referred to would bring that to my mind.

Q. Isn't that what they were figuring on at that time?      A. I believe it was.

Q. And the \$33.80 included the welding and everything?

A. Could I look at that letter again?

Q. To which letter do you refer?

A. The letter you had me look at a minute ago. My recollection is that it does not include the welding. It is not mentioned in that paragraph. There are two separate items.

Q. What is there in this letter that tells you that the \$33.80 did not include everything?

A. Because that is separated up above—do you see that (indicating)?

Q. Is there anything in this letter or writing but the complete job—welding, reinforcing, the placing of the framework, and everything—and is there any price?

A. Down there is a description of what the placing includes, in the last paragraph on that page.

Q. Yes.

A. And up above you find welding is a separate one from the placing. Do you see that at the top of the letter?

Q. At that time you were figuring on placing the

(Testimony of Ross L. Mahon.)

steel, putting [118] in the supporting framework, and welding it, weren't you?

A. Let me point out something. May I show you something?

Q. I am asking you a question.

A. What was the question, please?

(The record was read by the reporter.)

A. We were figuring on doing the whole job.

Q. Were you at Sacramento when the bids were opened on October 5th?      A. Yes.

Q. And at that time didn't you personally know what all the other sub-bidders had bid for this particular work?      A. No.

Q. Didn't you know Mr. Murphy's price at that time?      A. No.

Q. Didn't you know the price of the Los Angeles concern?      A. No.

Q. You did not even inquire as to what the other subcontractors had bid on this work?

A. I inquired, yes.

Q. And weren't they given you?

A. No. If they were given to me I wouldn't have believed them. Let me see that letter again. I want to point out a thing. You will notice that bid item 11 was one price in the contract, in the bids, and bid No. 12 was a separate price. They had to be separate because they were quoted as separate prices by the contractor. The welding, therefore, could not have been in the price, if you will notice that.



(Testimony of Ross L. Mahon.)

Q. There are two separate bid items?

A. That is correct. One was welding, one was the placing.

Q. But is there anything in this letter fixing the price of \$33.80 as the price of anything?

A. When there are separate items in the bids, you have to quote separate prices in making out the separate bid items.

Q. I ask you if there is anything in this writing quoting \$33. as the price of anything?

A. No, no price on it.

Mr. Wrigley: That is all. [119]

Mr. Moore: No questions.

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LOREN HUNT,

recalled;

Cross-Examination (resumed)

Mr. Moore: Q. Mr. Hunt, before the recess I asked you if you would look in your record so you could inform us as to this charge for steel that went into Abutment No. 1 in the amount of \$369.18. Have you done so?

A. Yes, I have some invoices showing that. There is one of them—Gerlinger's Foundry, California Zinc.

Q. What items go to make up the \$369?

A. Principally some of that steel.

Q. What was that?

(Testimony of Loren Hunt.)

A. It was that steel—that steel, some welding rod, and some oxyacetylene.

Q. You have the oxyacetylene as a separate item; I would like to know the items that you charge there that constitute the \$369.18 for steel. Read them off.

A. There is 9.95 tons, used mine rails, \$15 a ton, \$149.25.

13,740 pounds second hand assorted steel, that was \$240.

Q. What was that last?

A. 13,740 pounds, second hand assorted steel as selected, \$35 a ton.

Q. That is pretty near seven tons?

A. That is right, but not all of that steel went in there.

Q. I am trying to find out what went in there; that is what I am asking you.

A. I would say a portion went in. I couldn't say definitely how much.

Q. You have already read off there 16 tons, have you not?

A. That is right.

Q. That constituted the steel that went to hold up this cantilever isn't that correct?

A. Yes; I don't say all that steel went in [120] there.

Q. Where did the steel go?

A. There was some steel that went in there for rail.

Q. What rail?

A. Rails that had nothing to do with the steel support.

(Testimony of Loren Hunt.)

Q. How many uprights were there?

A. There appear to be six in this picture.

Q. On the job, how many were there, do you know?      A. No.

Q. There weren't over ten, were there?

A. That is approximate.

Q. How much do one of those steel rails weigh?

A. 40 pounds a yard.

Q. Can you tell us how many yards went in there?      A. No, I can't.

Q. There wouldn't be over a ton of steel that went in, would there?

A. I believe there was more than a ton of steel.

Q. Would you say more than two tons?

A. I think approximately there were more than two tons.

Q. More than two?      A. Yes.

Q. Three?      A. No, I don't think so.

Q. About two tons?      A. Approximately.

Q. You paid \$15 a ton for it, did you?

A. Yes.

Q. \$30?      A. \$30 for the rail.

Q. Why did you charge \$369 then to the Soule Steel people?

A. Abutment 1 was not made up by me, personally, and I assumed those figures were correct.

Q. Who made that up?

A. It was made in the San Francisco office from invoices.

Q. In other words, the figures that you have

(Testimony of Loren Hunt.)

given here on direct examination with respect to Exhibit K, examined by your own counsel, the figures in regard to Abutment 1 were not made up by you, is that correct?      A. No. [121]

Q. How about the oxyacetylene welding, \$11.10; was that made up by you?

A. That was sent down to San Francisco as approximately what was used.

Q. Then what was this \$49.50 that you charged to Soule? Did you do that, or——

A. That was taken off the daily summaries in the San Francisco office.

Q. How about the labor, \$2545.40?

A. That was taken from San Francisco.

Q. Then you didn't have anything to do with this charge on Abutment 1, is that correct?

A. Abutment 1 was made in San Francisco.

Q. And your testimony this morning is not the fact, then, that you did make these labor charges, is that correct?

A. Well, they were made more or less under my supervision.

Q. We will come back, then, to the labor. What labor was that \$2545? Was that labor? What was it devoted to? Have you found that during the noon hour?

A. Yes, I found that, and I find that there is an error in that.

Q. What was the error?

A. I checked with the dates directly from the daily summaries and found that some of that labor

(Testimony of Loren Hunt.)

and the dates was charged on dates when I know there were no supports being put up for the reinforcing steel.

Q. You do not know how much that item is in error, then?

A. Well, I rough it out from the dates. It looks like it was \$1200 in error in labor alone.

Q. That would still leave some \$1300 worth of labor. What was that labor used for? What type of construction?

A. It was used for the falsework.

Q. What do you mean by the falsework?

A. Well, at that time we had no distinction between falsework for the steel and for our [122] concrete.

Q. I repeat the question: What do you mean by the falsework?

A. The falsework is the bracing.

Q. Inside the arch?

A. Inside the arch, too.

Q. In other words, as I understand you, this labor charge, then, purports to be for labor in constructing the falsework, the framework which supported the arch, is that correct?

A. That is partially correct.

Q. Where is it incorrect?

A. It is also for supporting the steel in the open, mass portion.

Q. These uprights (indicating)?

A. That is right.

(Testimony of Loren Hunt.)

Q. The ten uprights, is that correct?

A. I couldn't say.

Q. Isn't it a fact that Soule placed that steel in the mass formation through men working under Mr. Stevens?

A. Not to my knowledge.

Q. How much labor was required, in dollars and cents, to place those uprights?

A. I couldn't tell you.

Q. How much was charged for placing the falsework in the arch?

A. The summation is together.

Q. Isn't it a fact that this arch was necessary in order, in its primary purpose, to support the concrete?

A. That was primarily for the arch, yes.

Q. It was necessary for that arch to be put in there in order that the concrete could be poured, was it not?

A. That is right.

Q. You made no charge for the lumber that went in there, but you are making a charge for the labor or portion of the labor, is that correct?

A. There is no charge for the lumber. There was no lumber used in supporting the steel.

Q. The labor was expended in putting that lumber into place, wasn't it?

A. On looking at it this noon, in doing back to the [123] original papers, I find that it was.

Q. These figures in here are then incorrect?

A. For Abutment 1.

Q. When did you make this change in Abutment 1, along sometime in October or November?



(Testimony of Loren Hunt.)

A. Will you repeat that, please?

Q. When did you make the change—the question is a rather mixed one. I will withdraw it. When did you back-charge any of this labor or material on Abutment 1 to Soule or revamp your cost?

A. I would say November through January, 1940 and 1941.

Q. And that was long after Abutment No. 1 had been completed is that correct? A. Yes, sir.

Q. Let us travel along to Abutment No. 1—and, by the way, in checking those figures back on labor, did you discover by any chance that also there was labor included in there that was expended on Abutment 2?

A. No, I don't think so. There might have been at that early stage, but I doubt it.

Q. Wasn't there labor included in there for moving the concrete mixer?

A. On checking over that, you could tell from the records.

Q. Moving along to Abutment No. 2, I will call your attention to Drawing 8 of the Government. That is the detail of abutment 2, is it not?

A. That is right.

Q. Let me ask you, wasn't this particular abutment, when it was placed on the edge of a natural slope with the face of the abutment about 63 feet below the level of the surface of the ground, didn't it have to be excavated to put that abutment in?

A. Yes.

(Testimony of Loren Hunt.)

Q. In other words, they dug a big hole in the ground? A. That is right.

Q. And the side walls were rather sloped so that they would hold, is that correct?

A. That is right.

Mr. Wrigley: Pardon me. Are you now talking about Abutment [124] 1 or Abutment 2?

Mr. Moore: Abutment 2.

Q. I will call attention to the fact that at the bottom of this there were forms put in there for two footings, weren't there?

A. That is right, certain footings. They are indicated here.

Q. And those footings were parallel footings that ran through the base of the abutment, is that correct? A. That is right.

Q. And those were about 29 feet long, 14 feet 6 inches, and 6 feet in depth, is that correct—in other words, these concrete footings?

A. That is right, it indicates that on the plans.

Q. And those were put in by the Union Paving Company, is that correct?

A. The forms were put in.

Q. What was the next step in construction there?

A. The forms were placed and then the reinforcing steel was placed.

Q. You mean the side forms were placed?

A. The side forms—the forms first placed, then the dowels, and then the mat was placed.

Q. There was a steel mat placed at the bottom, was there not?

(Testimony of Loren Hunt.)

A. That is right, indicated here.

Q. Was that in these footings?

A. In these footings indicated right here.

Q. Then above that, about six feet above it, there was a second steel mat put in, is that right?

A. That is correct.

Q. And then the dowelings were run in through the lower mat and up through the upper mat, is that correct?

A. That is right.

Q. How far up above the upper mat did they extend?

A. That looks like it is approximately six feet.

Q. How were those dowels held in place, do you know?

A. They were usually held in place—they rested principally [125] on the mat and they were held longitudinally by, usually, a 2 by 4.

Q. And the placing of the two mats and the putting in of the dowels was done by the Soule Steel?

A. That is right.

Q. Then the next step was the Union Paving Company would pour these footings solid, is that correct?

A. That is right.

Q. Leaving the dowels extending up some five or six feet above the concrete, is that true?

A. That is correct.

Q. Then the U. P. would build the outside forms, would they not?

The Court: Will you read that question?

(Question read.)

(Testimony of Loren Hunt.)

The Court: That is the Union Paving Company.

Mr. Moore: The Union Paving Company—pardon me—I have got in the habit of referring to it in that way.

Q. How high were those built, do you know?

A. No, I couldn't tell you exactly the exact height.

Q. The forms run up 30 or 35 feet, don't they, somewhere in that neighborhood, the first forms?

A. The first forms, no, because we had to stop in here at these beams.

Q. You do not know how far up the forms were?

A. No.

Q. How were those forms supported, do you know?

A. They rested right down on the bottom, on top of these footings.

Q. How were they held on the side?

A. Braces.

Q. Braces running out to the side walls held them, is that correct? A. Yes.

Q. Then how did Soule proceed? Would he put in the reinforcing steel, then?

A. He would put in the reinforcing steel then.

Q. How would that be held in place

A. It was usually leaned up against the form.

[126]

Q. The outside form conformed to the Engineers' or Government specifications to where the outside of the abutment would be, is that correct?

A. That is right.

(Testimony of Loren Hunt.)

Q. And then the steel was inside the outside form but supported in some manner against the outside form, is that correct? A. That is right.

The Court: Q. Do you know how it was supported?

A. These bars were vertical, with the exception of these (indicating), and they were braced in against the side, and to be definite—I don't know whether they would have dough balls.

Q. Then you had a sort of trestle coming over from the hoist that was alongside Abutment 1, had you not? A. Yes.

Q. The concrete would be hoisted up in the hoist alongside of Abutment 1 and run over in cars to Abutment 2, is that correct? A. That is right.

Q. Into some sort of hopper or something of that sort? A. That is right.

Q. And then through the means of elephant trunks, it would be poured, and it would be poured up to near the top of the forms, and then I assume the forms would be extended higher into the air and braced? A. Yes.

Q. And then Soule, as steel was required, would additional steel so it could be held, and it would be held against the outside forms, is that correct?

A. That is right.

Mr. Moore: I will offer this and ask to have it be marked with an appropriate number.

The Court: What about this one?

Mr. Moore: That has been marked your Honor.

(Testimony of Loren Hunt.)

(The document was received in evidence and marked "Plaintiff's Exhibit 17.") [127]

Mr. Moore: Q. Let us take the construction of Pier 1 for a moment. On the base of Pier 1, that was an uneven base, was it not, one portion of the base being lower than the other, is that correct?

A. What actually happened was that the ground at this elevation was unstable and we had to extend the depth down I think approximately 10 feet, not more than 10 feet.

Q. Deeper than these plans?

A. Than these plans show.

Q. After you had gotten to a base what was done? What was the first step in construction?

A. The first step was to build the supports up.

Q. What supports?

A. Support the reinforcing steel.

Mr. Moore: Just a minute. I will ask that that answer go out.

Q. Just describe the supports that you are referring to.

A. In Pier 1 we used angle iron, vertical angle iron to support both the reinforcing steel and the runways.

Q. Is that the type of construction that you described this morning, or practically the same as these railroad irons or angle irons in a vertical position?

A. That is right.

Q. Isn't it a fact that the first thing that was



(Testimony of Loren Hunt.)

done was the mat at the bottom would be put in by Soule, was it not, on sills, or something of that sort, a steel mat?           A. In some cases, yes.

Q. And then this interior framework would be put in, is that correct?           A. Not in all cases, no.

Q. I will come to Pier 3, but that is what would be done if it was not put in?

A. That is right, if it was not put in they would put that mat in first.

Q. They would put that mat in first, and then these steel up- [128] rights would be erected. By the way, the original plans called for 10 by 10 timbers as uprights, is that correct?

A. That is what our general idea was before we got on the site.

Mr. Wrigley: You say the original plan. What plan do you refer to?

Mr. Moore: The original plan of construction of this interior framework.

The Witness: That is at the base.

Mr. Wrigley: You do not refer to the Government plans.

Mr. Moore: No.

The Witness: No.

Mr. Moore: Q. I am talking about the Union Paving Company's plan. And that would require that as the pouring of the concrete progressed, these 10 by 10 timbers would have to be pulled out, leaving a void which would have to be poured with concrete, is that correct?           A. That is right.

(Testimony of Loren Hunt.)

Q. And the plan was subsequently changed, and the plan that was actually used was putting in these old railroad irons or angle irons which the Government would permit to remain in this mat without the necessity of pulling them, is that correct?

A. That is correct.

Q. And then on these, in the manner in which you described, there would be built a platform, would there not?

A. Yes, these are in the bases.

Q. In the bases, and how far above the bottom or base line would the first platform be built?

A. Do you mean to say our intention was to build a platform——

Q. No, I am asking you wasn't there a platform actually built?

A. Yes, there was a platform built.

Q. How far above the base of Pier 1?

A. I couldn't say. [129]

Q. Well, you said something in your previous examination about anything from 10 to 20 foot lifts; that is what you said.

A. Yes, but it varied. I couldn't specifically point how high it was in Pier 1.

Q. It would be somewhere between 10 to 20 feet above the base, would it not?

A. That is right.

Q. And these angle irons and subsequently railroad irons would be how high?

A. The rail was 30 feet.

(Testimony of Loren Hunt.)

Q. In other words, the irons would stick up 30 feet, is that correct? A. That is right.

Q. And some 10 or 20 feet from the bottom of them there was a platform built, was there not?

A. There was internal bracing.

Q. Internal bracing which you have described here with the 6 by 6's and the 2 by 6's, is that correct? A. That is right.

Q. In addition, there was a platform that was 10 to 20 feet above the base?

A. There was a platform built at the pouring level.

Q. From Abutment 1—that is, where the hoist is, where the concrete went up on the hoist—it came down and it was run over this trestle work, past Abutment 2, to Pier 1, is that correct?

A. That is right.

Q. That runway, if you want to call it that, or trestle, the top of it was level with what portion of the pier when completed?

A. The top trestle was level with the top.

Q. In other words, as the cars or buggies would come across from the hoist, they would come on Pier 1 at a point that was at the top——

A. Approximately the top, yes.

Q. Of Pier 1, is that correct?

A. That is correct.

Q. How high was that pier?

A. It is indicated on the plans. It is 92 feet 6 inches from the bottom. [130]

(Testimony of Loren Hunt.)

Q. How was that trestle work supported 92 feet and 6 inches above the base of the piers?

A. Usually by 6 by 6's.

Q. That was built up there?

A. That was built up.

Q. And supported, and when the cars or buggies came across filled with concrete, what happened to them? Were they dumped in a hopper?

A. Dumped into an elephant trunk and down to another hopper.

Q. The other hopper would be where? We are pouring the base now.

A. Down at a lower level, at a level where we could pour from.

Q. That would be your pouring level, is that correct, and through that elephant trunk it would come down in this hopper?

A. That is right.

Q. And be emptied into buggies?

A. That is right.

Q. These buggies would run around on this platform? A. That is right.

Q. And they would be dumped in to fill the concrete in the base? A. That is right.

Q. We will just assume that the first pour was 10 feet, or the lift was 10 feet above the base. When you got to that or close to that point, the platform would be moved up another segment or section, is that correct?

A. It depends upon how far we could drop the concrete.

(Testimony of Loren Hunt.)

Q. I mean the lift would be raised. This platform would be removed, and using the old timbers, or perhaps part of them were replaced, a similar platform would be built 10, 15 or 20 feet above whatever the distance was? A. Yes.

Q. How high was this reinforcing steel? How far did it stick up from the base?

A. The plans indicate that the building steel was up maybe 20 feet before it was welded. [131]

Q. What is that?

A. 20 feet before it was welded. There is an indication of a weld here.

Q. When you came to 20 feet with your pouring or closer to 20 feet, you would stop pouring, wouldn't you? A. Yes.

Q. And additional pieces of reinforcing steel having been placed, they would be welded at that point, wouldn't they? A. That is right.

Q. And meanwhile this structure that you have referred to—you say it was 35—those rails were 35 feet in height? A. 30 feet.

Q. It would be sticking up 10 feet; you would have 10 feet more rails when you had done that, is that correct? And that would be built up, though, and the reinforcing steel would be raised against that, is that correct? A. That is right.

Q. And then you would proceed with the same process? A. That is right.

Q. In other words, this interior framework that you are referring to was used for two purposes, was it not? A. That is correct.



(Testimony of Loren Hunt.)

Q. For the pouring of the concrete and also for supporting the reinforcing steel, is that correct?

A. That is correct.

Q. Now, that same type of construction was followed in Piers 3 and 4, was it not?

A. That is right, 2, 3, and 4, right on up through to 7.

Q. In making up these charges, where the steel was held against the inside framework, you have charged the entire framework to the Soule Steel Company, is that?

A. That is my—

Q. And in regard to the abutments—and we will eliminate Abutment 1—and the other piers supported by the outside forms, you did not charge it, is that correct?

A. That is [132] correct.

Q. You drew a distinction between whether it was supported on the inside framework or whether it was supported on the outside forms, is that correct?

A. The distinction can be stated a little differently, but that is all right.

Q. That is the fact?

A. That is right.

Q. That is the distinctive fact.

The Court: Q. You state the distinction in your own words.

A. The distinction is that the 2-inch bars are practically the only thing that seem to be in dispute.

Mr. Moore: I beg your pardon. It is disputed all the way through.



(Testimony of Loren Hunt.)

The Witness: Well, the 2-inch bars are the heaviest bars, and they lean in on this falsework, and Piers 8, 9 and 10 and Abutments 2, 3, and 4 are a lighter steel, and the steel is more or less vertical, and the weight of the steel is inconsequential to the weight of the concrete that it was necessary to support.

Mr. Moore: Q. Who told you to charge 100 per cent of this interior construction to Soule?

A. That was the instructions that I had from the San Francisco office.

Q. In other words, the explanation that you have given is merely your own idea, but you do not know why they ordered you to do that?

A. That is my idea, yes.

Q. On all of these piers, regardless whether the steel was attached to the outside or whether it was supported by the inside framework, up until October, wasn't all of your labor charged the same on all of them?

A. Will you elaborate on that?

Q. What I mean is, wasn't all labor and materials——

A. Charged to a general account—yes. [133]

Q. Charged under this chart of accounts to the abutment, to the concrete in the abutment, the concrete in the piers—the concrete in the abutment No. 7, the concrete in the Pier No. 8, Piers Nos. 1 and 7, above the top of the base No. 9, and Piers 8, 9 and 10—No. 10? Wasn't all your labor and material

(Testimony of Loren Hunt.)

charged that is now in dispute to items 7, 8, 9 and 10?      A. Yes.

Q. Labor and materials, is that correct?

A. Yes, sir.

Q. No charge was made to Item No. 11, reinforcing steel?      A. No.

Q. And those charges that you have referred to, up until sometime in October, as I understand you, were made under instructions given to you at the beginning of the job by Mr. Dowling, is that correct?

A. It was worked out by Mr. Dowling, and Mr. Cochrane, and myself.

Q. Then subsequently, sometime in October, you received instructions from the San Francisco office to change your method of charging?

A. Yes, I found the note (handing a document to Mr. Moore).

Q. Your attorney, here, has produced a note of October 12th, 1940. Is that the note that you were referring to?

A. That is the note I was referring to.

Mr. Moore: I will offer this in evidence. It reads, "October 12, 1940, L. W. Hunt, Pit River.

"Referring to our notice September 23, 1940 in relation to our employees working for Soule Steel Company, the information submitted in connection with this matter leaves us quite uncertain as to definite conditions. We would appreciate separate summation of each abutment

(Testimony of Loren Hunt.)

and pier with detailed charges for each at your earliest conven- [134] ience.

“A. LAWTON.”

(The document was received in evidence and marked “Plaintiff’s Exhibit 18.”)

Mr. Moore: Q. After you received that, did you receive any further instructions as to what you should do? A. Yes.

Q. What were those?

A. To go back through the records—first, to continue and distinguish between internal falsework as we progressed, and that was set up, and we had three shifts of timekeepers eventually set up, and I think the first date was about the end of October when that was carried and put in effect.

The Court: We will take a recess for just a few minutes.

(Recess.)

Mr. Moore: Q. Mr. Hunt, I asked you, or the defendants in this case, to produce certain records. I will hand you a folder and ask you what that is, if you recognize it.

A. These are charges that were used as the basis for our charges to Soule Steel.

Q. In other words, these are your computations, are they? A. Yes.

Q. And these were made up by you at about what date? A. Some of these are dated.

Q. Will you refer to them and tell us the dates—

A. Well, November 30, 1940.

(Testimony of Loren Hunt.)

Q. What did that cover?

A. That covered piers—November 28th—summary of materials that went into the construction of the steel supports and falsework of Piers 2, 3, 4, 5, and 6 up to the time we started to take an accurate account of the materials used. [135]

Q. What you just read is a letter signed by you and addressed to the Union Paving Company?

A. Union Paving Company, San Francisco.

Q. In other words, you went back over the records which had previously been charged to pouring concrete and took those figures from them?

A. Yes, and also a print we made up of the typical sketch—a typical sketch of the typical layout.

Q. After taking this out of the other charges, these are included in the bill that is now rendered against Soule? A. That is right.

Q. Will you tell us the next date?

A. January 14, 1941.

Q. That is a letter by yourself to the home office, is it?

A. Yes: "Enclosed is a summary of the materials that went into the construction of the steel supports and falsework for Piers 1 and 7."

Q. That was compiled in the same manner, was it? A. In the same manner, yes.

Q. Are there any later ones?

A. The later ones are weekly summaries of materials used. The next one is for the week ending November 2nd.

(Testimony of Loren Hunt.)

Q. That was after you had changed your method of cost accounting, is that correct? A. Yes.

Q. Where you were charging it direct to Soule?

A. That is right.

Q. And those that came after that——

A. Those that came after that are in the same vein—the week ending January 11th—and there is some labor included in here, too; here is a typical one. Period March 1st to March 31st, taken *direction* from the daily summaries.

Mr. Moore: We will offer this, your Honor, with an appropriate number. [136]

(The document was received in evidence and marked “Plaintiff’s Exhibit 19.”)

Mr. Moore: Q. Referring to your daily summary, there has been one introduced here with relation to—— A. That is Pier 4.

Q. Does it appear on your daily summary where labor is charged and to what item?

A. Yes, here is falsework, Pier 4. Now, these are made up by different timekeepers. We had a three-shift operation there, and we had one timekeeper on each shift.

Q. Now, those are daily time sheets. Does that show the account number in any of the bills?

A. Right there, 8/3 and 9/3.

Q. In other words, even on your daily time sheets up to November labor was charged to placing concrete and not to steel, is that correct?

A. It was charged under that operation of falsework, yes. You are right.

(Testimony of Loren Hunt.)

Q. Every record, cost sheets or records of any other type up to that date, appeared in this manner? A. That is right.

Q. And no charge made to Soule at all?

A. No charge.

Q. With regard to this interior framework that you referred to, it was essential to the pouring of the concrete in those piers, was it not?

A. Yes.

Q. And was used for that purpose?

A. Could I enlarge upon that?

Q. Yes, but will you answer the question?

A. Yes.

Q. It was used for that purpose? A. Yes.

Q. Go ahead.

A. Well, it was used for both, for placing the steel first and then the runway second.

Q. It was used for both purposes; it was used in the pouring of the concrete, was it not?

A. Yes.

Q. And there was no other method at that place or way in which that concrete could be poured, was there?

A. There were other [137] methods, but that was the method we used.

Q. And those were erected by the Union Paving Company, were they not?

A. They were erected by the Union Paving Company.

Q. And by labor paid by the Union Paving Company? A. Yes.



(Testimony of Loren Hunt.)

Q. And the materials that went into it were paid by the Union Paving Company?

A. Yes.

Q. To your knowledge, or did you, rather, ever confer with Mr. Stevens or any official of the Soule Steel Company as to how this should be constructed, that interior framework?

A. That was not my department; that was the superintendent's department.

Q. But you—— A. I did not.

Q. You did not. Did you ever, yourself, confer with them as to where the materials should be purchased, or what price should be paid for them?

A. No.

Q. Did you ever, yourself, confer with them as to the labor that was to be used—I mean the individual laboring man?

A. No, that was—I did not, and I maintain that that is the superintendent's job.

Q. I am asking you about yourself.

A. No, I did not. I had nothing to do with that.

Q. In other words, so far as you, yourself, were concerned, you were in charge of all the cost accounting, cost records on the job, were you not?

A. Cost—office manager.

Q. You were the office manager-engineer on the job, is that correct? A. Yes.

Q. And you, yourself, as such office manager, never had a conference with any representative of

(Testimony of Loren Hunt.)

the Soule Steel Company along the lines I have just referred to?

A. I never entered any conference. I was present at a few. [138]

Q. That was after October 15th, though—none before? A. I can't name any date.

Mr. Moore: I think that is all of this witness. Just a moment, please. There is one question I overlooked.

Q. When was it that you finally got your cost records revamped and performed this labor that is in the exhibit?

Mr. Wrigley: I didn't understand that question.

Mr. Moore: I didn't finish it. I am looking for an exhibit. Will you read the question, Mr. Reporter?

(Question read.)

Mr. Moore (continuing): Labor and material that is in Exhibit 19—when was that job finished?

A. The last entry is as of May 31, 1941.

Q. And the compilation which I understand was prepared by you or from your notes, Defendants' Exhibit K, when was that finally compiled, do you know? A. No, I couldn't say.

Q. Was that prepared by the home office?

A. That was compiled, I believe, by the home office.

Q. You had nothing to do with the compiling, other than furnishing whatever information——

A. I furnished the information.

Mr. Moore: I think that is all.

(Testimony of Loren Hunt.)

Redirect Examination

Mr. Wrigley: Q. Mr. Hunt, your instructions, generally speaking, with reference to your duties and functions up there, came from the San Francisco office, did they not?

A. They came principally from the San Francisco office.

Q. And usually there was some time elapsed between your records getting into the San Francisco office and being checked over here and you being issued instructions there?

A. Pardon me. I didn't catch that. [139]

(Question read.)

A. Yes, there was a time allowance to get any change in operation.

Q. The exhibit which has been marked Plaintiff's Exhibit No. 18, October 12th, was that received by you before the accident or after the accident?

A. Well, mail usually took overnight, and so we probably got it about the 14th of October.

The Court: Q. What was the date of the accident?

A. The date of the accident was October 15th.

Mr. Wrigley: Q. In other words, the facts that led to this memorandum were all prior to the accident? A. Yes.

Mr. Moore: He did not know what led to it. I think the question is improper.

(Testimony of Loren Hunt.)

Mr. Wrigley: Is that supposed to be an objection to the question or a statement?

Mr. Moore: The question was asked and answered before I could object to it. I will withdraw the objection.

Mr. Wrigley: Q. Now, Mr. Hunt, Mr. Moore asked you if you at any time sent any bills to Soule Steel Company for this interior falsework. Were any bills for anything sent to anybody out of your office up at Pit River?

A. All billing was done from the San Francisco office.

Q. And no billing was done from up there?

A. No billing, no.

Q. Do you, of your own knowledge, know what billing came out of the San Francisco office?

A. No. May I make a correction to that?

Q. Yes.

A. Occasionally we rented some equipment to some other contractors that are located up there, and when they came in to offer to pay for it, I took their money and presented them with a paid receipt. No billing went out of that office. [140]

Q. All equipment had a fixed rental price, didn't it?

A. That is right.

Q. Mr. Moore asked you if it was not a fact that the original plan as devised for holding up this steel and so on——

Mr. Moore: Holding up what?

Mr. Wrigley: Holding up the reinforcing steel.

(Testimony of Loren Hunt.)

Mr. Moore: I am going to object to that because it is contrary to his testimony now. His testimony is that was used for two purposes. I think the question is improper. It assumes facts that are not in evidence, your Honor, and contrary to the evidence.

Mr. Wrigley: Would the reporter read, because Mr. Moore interrupted before and now he objects to my asking the very thing that he says there.

(Question read.)

Mr. Wrigley: The steel, whatever it is used for, the original——

Mr. Moore: When you put that “and so on” in there——

Mr. Wrigley: No, it is there. The reporter has it down.

The Court: Proceed.

Mr. Wrigley: Q. (Continuing): ——calls for the use of 10 by 10 wood uprights, that is a fact, is it not?

A. That was in the base. That is a fact—bases.

Q. Later that was changed so that you used steel rails or angle iron in place of 10 by 10?

A. That is right.

Q. Did the use of rails or angle iron reduce the cost or increase the cost?

A. It decreased the cost.

Q. Now, you were asked about the trestle that was built from your concrete mixer at the location from which you poured Abutment 1, Abut-

(Testimony of Loren Hunt.)

ment 2, and Pier 1. Was any of the cost of [141] that trestle charged in your tabulation against Soule Steel Company?

A. That trestle did not include Abutment 1. It included just Abutment 2 and Pier 1. No, that cost was not in.

Q. Was any of the cost on any of the piers or abutments charged to Soule Steel Company where that reinforcing steel was held up by the use of your exterior forms?

A. No, with the exception of Abutment 1, and that is in error.

Q. Mr. Moore was asking you about the order in which this work was done, and your answer would give the impression that they would put up the steel and then they would stop and go no further until you had poured the concrete. Now, isn't it a fact that all this work was going on consecutively and that the reinforcing steel was always away ahead of the welding, and the welding was ahead of the pouring of the concrete?

A. That is right.

Q. With reference to this so-called summary, starting first in November, Plaintiff's Exhibit 19, those blue sheets, do you have in mind the figures as shown in this tabulation? A. Yes.

Q. Are those the same identical figures that went in to make up the figures used in Defendants' Exhibit K, or is there a variance?

A. There appears to be a variance of 3 cents.



(Testimony of Loren Hunt.)

Q. Now, assuming that that inside form work was not there first to hold up the reinforcing steel——

Mr. Moore: I am going to object to that; it was not first to hold up. It was for two purposes. I object to the question as leading, your Honor, his own witness.

The Court: You may omit the “first”.

Mr. Wrigley: Q. Assuming that the steel rails, the 6 by 6 cross pieces, and the 2 by 6 girders were not there at the time that you were ready to pour your concrete, would it have been necessary to have that type or that expensive construction [142] in order to pour the concrete?

Mr. Moore: I am going to object again. We have an expensive construction, your Honor. It certainly is leading to the highest degree.

The Court: That is a good argument. It has no place in the evidence. The form of your question is objectionable. Sustained.

Mr. Wrigley: Q. Were the use of steel rails for uprights such as were used on the various piers there necessary in order to build your form work or framework to pour your concrete?

A. It was not necessary for the forms.

Mr. Moore: Q. It was not necessary what?

A. It was not necessary for the forms.

Mr. Wrigley: Q. Did the interior falsework or framework in any way support or hold up your exterior concrete forms?           A. No.

(Testimony of Loren Hunt.)

Q. How were they held in place?

A. They were held in place by the bolts attached directly to the concrete already in place.

Q. In other words, as I understand the fact, the concrete forms outside were supported by those bolts which ran to the poured or finished concrete inside?

A. Yes; in other cases these bolts were completely through the pier.

Q. And did not in any way attach themselves or were not fixed to the interior falsework or framework?

A. That is right.

Q. Were the 6 by 6 girders necessary in order to pour the concrete?

A. The system we used, they were used as such.

Q. They were used, but if they were not already there, was it necessary in order to pour the concrete?

Mr. Moore: I do not understand your question. It sounds to me like it is highly argumentative and leading, your Honor, [143] in light of the witness' answer that they were used.

The Court: The ultimate fact is they were used.

Mr. Wrigley: The fact is they were used, as I understand, because they were there.

The Court: Who brought them there?

Mr. Wrigley: They were put there to hold up the reinforcing steel.

The Court: By whom?

(Testimony of Loren Hunt.)

Mr. Wrigley: You mean put there by whom?

The Court: The timbers you are talking about.

Mr. Wrigley: They were put there by the Union Paving Company.

The Court: Very well.

Mr. Wrigley: Q. Did you, prior to this method, devise a plan for your use in pouring the concrete without those inside rails, inside girders, and the 6 by 6 girders, and the 2 by 6 cross pieces?

A. We had a system devised where those braces were unnecessary.

Q. When you say those braces were unnecessary, what part of the structure do you refer to?

A. The 2 by 6's.

Q. Were the 6 by 6's necessary on your plan?

A. They were.

Mr. Moore: Just a minute. You say his plan. Did he draw a plan?

The Court: In any event, he said they were necessary.

Mr. Wrigley: Q. In response to counsel's question, did you personally prepare this plan for pouring the concrete that you referred to?

A. We drew up a plan, yes, sir.

Q. You say "we"——

A. I drew up a plan.

Q. And in that plan you say these 2 by 6 braces were not necessary? A. No. [144]

Q. Was any other part of the structure necessary?

(Testimony of Loren Hunt.)

A. We had to have vertical supports for this.

Q. Was it necessary to build a framework running up into the air, 60 feet ahead of your work, in order to pour the concrete?

A. No, it was never necessary for that.

Q. How far ahead of your work of pouring concrete was it necessary to build forms in order to pour concrete?

A. Just had to have that platform just above the forms.

Q. What do you mean by "just above the forms"?

A. If the forms was 12 feet, we had to have our platform one foot higher so we could get underneath and finish. It was not necessary to build it up 60 feet.

Mr. Wrigley: I think that is all.

#### Recross-Examination

By Mr. Moore:

Q. You say it was not necessary to build ahead 60 feet. Nevertheless, the fact remains, does it not, eventually you had to build that framework clear up to the top of the pier?

A. That is right, but it is far more expensive to build a 60-foot tower than a 10-foot tower.

Mr. Moore: I will ask that the answer go out as not responsive. I do not want to get into the question of expense on that.

Q. You have to use the timbers just the same, don't you?

(Testimony of Loren Hunt.)

A. It is not necessary to have so many braces, sway braces.

Q. Wasn't this steel also supported from outside support put up by Mr. Stevens?

A. When you say "this steel,"——

Q. I mean the reinforcing steel.

A. In some cases it was.

Q. And you had to build this interior framework all the way to the top in order to pour the concrete, did you not?

A. That is right. [145]

Q. You say the way it was built up, it was somewhat more expensive, is that correct?

A. That is right.

Q. And so, therefore, you charged 100 per cent. cost to Soule; that is correct, isn't it?

A. That is correct.

Mr. Moore: That is all.

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J. A. DOWLING,

called as a witness on behalf of defendants; sworn.

The Clerk: Q. Will you state your name?

A. J. A. Dowling.

Direct Examination

By Mr. Wrigley:

Q. With reference to the period in question, starting in October of 1939 and up to the comple-

(Testimony of J. A. Dowling.)

tion of the job, were you connected with the Union Paving Company?      A. I was.

Q. In what capacity?      A. Manager.

Q. You were such on October 4, 1939 and October 5th, when the bids were opened?

A. I was.

Q. You heard the testimony of Mr. Mahon, I believe it was?      A. Yes, sir.

Q. As to a conference held in your room at the Hotel Senator, Sacramento, on October 4th?

A. Yes, sir.

Q. Who was present at that conference, according to your recollection?

A. It was no conference. Knocked on the door about ten o'clock at night, and Mr. Soule wanted to talk about the job. No price was given, whatsoever.

Q. Did they at that time submit any writing or bid or price for this steel work?

A. They did not.

Q. Now, after the contract was entered into on January 6th, 1940, did you have any conferences on the job with Mr. Soule that you remember?

A. After? [146]

Q. After the contract was let on January 6th.

A. Yes. He and I went up on the job on, I think, the 20th of December.

Q. The 20th of what?

A. 20th of December.

Q. No, I say after the contract was let on January 6, 1940——      A. Yes.



(Testimony of J. A. Dowling.)

Q. Did you meet him on the job?

A. No. The only thing we did do, we went up there together on the 20th of December, and, as I understand it, that was his first time on the job, the jobsite.

Q. After January 6th was he ever on the job with you at any time?

A. I can't place him there at any time. He might have been there once, but that is the only time he might have been there.

Q. You haven't any recollection of any discussion or meeting him on the job after January 6th?

A. No.

Q. Did you meet Mr. Stevens on the job after January 6, 1940?      A. Quite frequently.

Q. How much of the time, extending, we will say, from January 6, 1940, until midsummer of 1941, how often did you go up there?

A. Quite often.

Q. What do you mean by "quite often"?

A. Usually once a week, once in ten days.

Q. And would stay how long, on an average?

A. Stay there from one day to a week or ten days at a time.

Q. Did you have any discussion with Mr. Stevens with reference to the interior framework or falsework on these piers?      A. I did.

Q. Approximately when did the first discussion come up?

A. Well, the first discussion came up along about in July.

(Testimony of J. A. Dowling.)

Q. Of what year?

A. Of 1940, early in July.

Q. Where did that discussion take place?

A. On the jobsite.

Q. When you refer to the jobsite you mean——

A. Where the work was under progress. [147]

Q. Where the work was going on?

A. Yes.

Q. Who was present, as you remember it, at this first discussion?

A. I don't recall who was present.

Q. Other than yourself and Mr. Stevens.

A. Other than myself—Mr. Hunt might have been, or Mr. Morrisett.

Q. Give us in substance what you said and what he said at that first conference with reference to the interior falsework or framework?

A. I asked him to sit down with us and adjust or come to some agreement of how the charges for the interior structure should be apportioned. He said he would take it up with San Francisco. Nothing happened until along about in September, again.

Q. Of the same year?

A. The same year. The same thing happened with no results. So I told him we would pay no more money for that work until such time as we could get a settlement or some adjustment of some type.

Q. Did you have more than the two discussions with Mr. Stevens with reference to the cost of this interior falsework and the framework?

(Testimony of J. A. Dowling.)

A. That was all. The job went along. We did not pay, then, from July until, oh, I guess it was December, 1940, tried to hold back enough to cover their share of the cost of the work, or what we thought it should be.

Q. Did you have any discussion as to dividing the cost, or anything like that?

A. No, that is what I wanted to bring to a head, if I could.

Q. Mr. Dowling, Mr. Moore introduced in evidence here an exhibit or writing called Plaintiff's Exhibit 13, addressed, "To Whom it May Concern," saying that final settlement was made on November 3, 1941. You heard that read in evidence, didn't you?      A. Yes. [148]

Q. Is that the fact?

A. It is not a fact.

Q. As a matter of fact, they have not made any final settlement yet, have they?

A. That is correct.

Q. As a matter of fact, under your contentions, at least, there is still a large amount of money unpaid to you for work on that job?

A. Yes, sir.

Q. And that matter is still under discussion with the Engineer up there, and they have not rendered a final decision or report on that?

A. It is past them. It is up to the Department of Interior.

Q. There is no filed decision on it?

(Testimony of J. A. Dowling.)

A. No, sir, can't get any reply out of them for a year and a half.

Q. Now, Mr. Nelson, an accountant, came down to your office previous to this trial, went over and checked all your figures in detail? A. He did.

Mr. Moore: He checked some of them, not all of them.

The Witness: He checked all he had time to check, and he asked me some more questions, and I asked him to write a letter. He wrote one letter, and we produced everything required in that letter, and he refused to write the second letter, and we didn't know what to give him.

Q. Mr. Nelson was connected with the firm of Skinner & Hammond? A. Yes, sir.

Q. In other words, you turned over to him all the records apparently that you thought he was asking for in the office? A. Yes, sir.

Q. So he checked these costs, so far as you knew, and after he checked them did he furnish you with a statement of the items that he wanted further data on?

A. For a portion of what he wanted. [149]

Mr. Moore: I haven't any objection, but I do not see what in the world a conversation between him and the accountant would have to do with this case, your Honor.

Mr. Wrigley: Mr. Nelson was turned loose carte blanche in the office. He took a lot of things—in fact, he took a lot of things that we did not know about until to-day. They introduced a photostatic

(Testimony of J. A. Dowling.)

copy of a document that we did not know was out of the office until today.

The Court: Anything that occurred in the office, no third person could be bound by.

Mr. Wrigley: Their man did it.

The Court: Did your man go down there?

Mr. Moore: Why, yes, your Honor. We took photostatic copies. They agreed to have our accountant go in and investigate Mr. Dowling's books.

The Court: What value has it here?

Mr. Moore: I do not know what the purpose of it is.

The Court: Develop the facts, whatever they are.

Mr. Wrigley: Q. Leaving out the penciled notes after Mr. Nelson got through, those are the items that he wanted further information on, aren't they?

A. That is correct.

Mr. Wrigley: We would ask that that be marked Defendants' Exhibit next in order, with the stipulation, of course, that the pencil notations on there were not on there at the time they were made.

Mr. Moore: I would like to know what the purpose of it is, Mr. Wrigley.

Mr. Wrigley: The same purpose as your introducing the tabulations of how they made up their records, which Mr. Nelson took without permission.

[150]

(The document in question was thereupon received in evidence and marked "Defendants' Exhibit V.")

(Testimony of J. A. Dowling.)

Mr. Moore: We didn't take anything we did not have permission to take.

The Court: In any event, all of the original books are here, aren't they? Neither side is bound by what this gentleman did?

Mr. Moore: We put an accountant in to get an investigation of the charges. That is all it amounted to. We were told we could make copies of anything we wanted.

Mr. Wrigley: That is correct.

Mr. Moore: I did not want to come before your Honor and make a motion under the Code, for which the Code provides, that we have the right to take photostatic copies. Mr. Wrigley said, "It is not necessary. Send your accountant in and make any memorandum or copy you want."

Mr. Wrigley: That is correct, but he was told specifically he should not take anything out of that office without getting permission, and he took it out of the office, and we never knew it until to-day.

Mr. Moore: He didn't take anything that he wasn't told down there. I told him to get copies of that—that is all I know—and I got copies.

Mr. Wrigley: Q. And in response to Mr. Nelson's request as contained in that writing, you gave this further memorandum?

A. Yes, that is correct.

Mr. Wrigley: The main purpose of these is to show that these same items they are questioning



(Testimony of J. A. Dowling.)

are identically the same as in the tabulation. We offer this as defendants' exhibit next in order. [151]

(The document was thereupon received in evidence and marked "Defendants' Exhibit W.")

Mr. Wrigley: Q. Now, during the progress of the work, aside from these conversations with Mr. Stevens, did you have any conversations with any other representative of Soule Steel Company with reference to the cost of this interior falsework or framework?

A. No, not until the completion of the job.

Q. After the completion.

Mr. Moore, have you a copy of this (indicating)?

Mr. Moore: The document that Mr. Wrigley is now going to introduce or question the witness in regard to, your Honor, a copy of it was attached to Mr. Dowling's deposition as Plaintiff's Exhibit No. A. I want to make that statement so it can be identified with his deposition.

The Court: Very well.

Mr. Wrigley: I want to state further for the record that this exhibit, here, consists of two pages, one in the form of a letter from the Union Paving Company to me, to which is attached a certain tabulation, and on both the letter and the tabulation there are certain pencil markings or notations, and Mr. Moore's copy is also marked up. I think it should be understood that these pencil markings were not part of the original writing.

(Testimony of J. A. Dowling.)

Mr. Moore: So understood.

Mr. Wrigley: Q. Mr. Dowling, showing you what purports to be letter of September 10, 1941, and an itemized statement, do you recognize those writings? A. Yes.

Q. As a matter of fact, they were sent to me to turn over to Mr. Thelen? A. That is correct.

Q. Who was connected in some capacity, as attorney or otherwise, with Soule Steel Company?

A. Yes, sir. [152]

Mr. Wrigley: Before examining the witness further, if your Honor please, I would like to offer those in evidence.

Mr. Moore: I have no objection.

(The documents were thereupon received in evidence and marked "Defendant's Exhibit X.")

## DEFENDANT'S EXHIBIT X

California Street

Phone GARfield 7820

Union Paving

San Francisco,

September 10, 1941

Mr. H. F. Wrigley

Monadnock Building

San Francisco, California

Dear Sir:

The total cost of constructing supports for reinforcing steel, templets, spacers, falsework, runways,

(Testimony of J. A. Dowling.)

etc., for use in building the Piers and Abutments of the Pit River Bridge is as follows:

Chargeable to Union Paving Co:

Runways	\$38,063.93		
Falsework	13,575.87	\$51,639.80	
10% Supervision	<u>          </u>	5,163.98	\$56,803.78

Chargeable to Soule Steel Co.:

Temporary supports for reinforcing steel, including templets and spacers	53,486.56		
10% Supervision	5,348.66	58,835.22	

Miscellaneous charges to Soule Steel Co.:

Moving and repairs to boom	1,893.82		
Additional Miscell. charges	383.58	2,277.40	\$61,112.62

This of course does not take into consideration any assessments for liquidated damages.

Yours very truly,

UNION PAVING CO.

By A. LAWTON

AL:E



(Testimony of J. A. Dowling.)

## Chargeable to Soule Steel Co.:

Temporary Supports:		Labor	Material	Total
Abutment 1		\$ 2,905.64	\$ 380.28	\$ 3,285.92
Pier 1		784.71	125.52	910.23
2		5,358.26	2,781.75	8,140.01
3		13,263.77	5,332.02	18,595.79
4		8,417.89	4,732.63	13,150.52
5		2,478.63.	1,059.17	3,537.80
6		2,457.19	493.61	2,950.80
7		2,185.00	730.49	2,915.49
Totals		\$37,851.09	\$15,635.47	\$53,486.56
10% Supervision				5,348.66
Miscellaneous Charges				
Moving & Repairs to Boom				\$ 1,893.82
Additional Miscell. Charges				383.58
Total				2,277.40
Total				\$61,112.62

[Pencil Notation]:

56803.78

61112.62

Total 117,916.40

[Endorsed]: Filed 4/9/43.

(Testimony of J. A. Dowling.)

Mr. Wrigley: Q. Mr. Dowling, this tabulation containing certain summarized figures, has it got the same identical totals as in the breakdown tabulation?

A. I think they are both the same, aren't they? They are supposed to be the same—same thing.

Q. Figures in this tabulation are the same totals as this?

A. Yes, they asked for a further breakdown of the amounts there.

Q. In other words, this statement was gotten up first?

A. That is correct.

Q. And they wanted a further breakdown and this one was then made up?

A. Yes.

Q. That was made up in response to their letters or demands of a statement for the cost of this work?

A. Yes, sir.

Q. To your knowledge, prior to making up the statements in question, had you ever billed Soule Steel Company for any specific amount?

A. Yes, in the early part of, I think it was, 1942, we sent them a partial bill for \$40,000.

Mr. Moore: I am going to object to that, if there is a bill in, on the ground that the billing is the best evidence, your Honor.

Mr. Wrigley: That is what I am coming to, but I do not think the witness understood my question. Will the reporter read it, because he said 1942, and this is 1941.

The Witness: I do mean the early part of 1941.



(Testimony of J. A. Dowling.)

We were all cleaned up there in May of 1941. [153]

Mr. Wrigley: Q. When you refer to an earlier billing, did you refer to this?

A. Yes, February 24, 1941.

Q. At that time the work was still in progress, was it not? A. Oh, yes.

Mr. Wrigley: We offer this as Defendants' Exhibit next in order.

(The document was thereupon received in evidence and marked "Defendants' Exhibit Y.")

Mr. Wrigley: It purports to be a billing or statement of costs up to the date of that billing.

Q. Now, Mr. Dowling, in that billing, as well as in the later billing, I note that there is an item charged there called overhead 10 per cent. What is that based on?

A. The regular overhead that you carry on all jobs—office services, insurance, tools, and equipment.

Q. Was that the usual and customary charge for overhead for such items? A. Yes.

Mr. Moore: I do not think that is a proper question, your Honor. In other words, here is a back charge. I do not know whether there is any custom or usage in connection with it.

Mr. Wrigley: I think the question of figuring cost not only includes the cost of the actual material——

Mr. Moore: I will withdraw the objection rather than argue it.

(Testimony of J. A. Dowling.)

Mr. Wrigley: Q. Was 10 per cent. the usual or customary charge to cover those overhead incidental expenses? A. Yes, sir.

Q. On the Pit River job—that was the first job of its kind for anybody to do, wasn't it?

A. It was on this coast, anyway.

Q. Based on the figures, so far as the United States Government is concerned, has it shown a loss or profit to the Union Paving [154] Company?

Mr. Moore: What is that?

Mr. Wrigley: The question was, Based upon the figures to date, does that job show a profit or a loss to the Union Paving Company?

Mr. Moore: I am going to object to that as incompetent, irrelevant, and immaterial. I do not know why the Soule Steel Company should stand his loss, if he had a loss, or why they should share in his profit, if he had a profit.

Mr. Wrigley: Nor why he should pay any part that you agreed to pay.

Mr. Moore: You haven't shown that we agreed to pay anything. I think it is improper, your Honor.

The Court: The objection will be sustained.

Mr. Wrigley: For the purpose of the record I want to show, first, by this witness that the bid was an unbalanced bid——

The Court: What do you mean by "unbalanced"?

Mr. Wrigley: Made up of many, many items.

The Court: The record is here, isn't it?

(Testimony of J. A. Dowling.)

Mr. Wrigley: And that the job showed a loss to the Union Paving Company.

The Court: Assuming it did, how does that enter into the merits of this case?

Mr. Wrigley: Only in this, that where the Union Paving Company has been forced to do and pay work that Soule Steel Company has agreed to pay or do and has not done, that enters into the picture, as I see it, of what they are supposed to do.

The Court: Whether there was a profit or loss would not determine whether there was liability.

Mr. Wrigley: I think the question of cost to Soule Steel [155] Company for labor or anything else is a factor in showing what they are supposed to do for a given amount of money.

The Court: The objection will be sustained. Let us proceed.

Mr. Wrigley: No further questions of this witness at this time.

The Court: At this time we will adjourn in any event.

(Thereupon the further hearing of the cause was continued until Thursday, April 15, 1943, at 10:00 o'clock a. m.)

[Endorsed]: Filed April 15, 1943. [156]

(Testimony of J. A. Dowling.)

Thursday, April 15, 1943

10:00 o'clock a. m.

The Clerk: Soule Steel Company v. Union Paving Co.

Mr. Moore: Ready.

Mr. Wrigley: Ready.

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J. A. DOWLING,

recalled;

Direct Examination (resumed)

Mr. Wrigley: Q. Mr. Dowling, showing you a letter dated December 8, 1939, on the letterhead of the United States Department of the Interior, Bureau of Reclamation, addressed to Union Paving Company, signed by R. S. Calland, Acting Supervising Engineer, can you identify that letter?

A. Yes, sir.

Q. And the reverse side of it?

A. That is the acknowledgment of the receipt of the letter.

Mr. Wrigley: May it please the Court, without reading this, because I do not think it is necessary to go into details, identifying this job, it is a letter from the Department of the Interior Dated December 8, 1939, instructing them to proceed under their contract. We offer that in evidence as the defendants' exhibit next in order. On the reverse side is a carbon copy of a letter from the Union Paving Company to the writer, acknowledging receipt of

(Testimony of J. A. Dowling.)

that letter. In this case he used the back of that as a carbon.

The Court: It will be admitted.

(The document was thereupon received in evidence and marked "Defendants' Exhibit Z.")

Mr. Wrigley: That is both the letter and the acknowledgment.

Mr. Moore: May I interrupt one moment?

Mr. Wrigley: You may. [157]

Mr. Moore: If I might interrupt a moment, your Honor, at the last hearing I neglected to introduce this drawing of Pier 2, I think it is. It was testified in regard to and I would like to offer it at this time.

Mr. Wrigley: No objection.

The Court: It will be admitted and marked.

(The document referred to was received in evidence and marked "Plaintiff's Exhibit 20.")

Mr. Wrigley: Q. Mr. Dowling, can you identify these writings, consisting of four pages, and tell us what that is?

A. That is the warrant of the Bureau of Reclamation for payments, certain payments to be made to the Union Paving Company by the Government.

Q. A statement of the——

A. Various payments.

Mr. Wrigley: Without attempting to read this into evidence, may it please the Court, it is the regular printed form with the tabulation. It is called "Estimate No. 20, to June 30, 1941." It purports

(Testimony of J. A. Dowling.)

to be on its face a final estimate, and it contains a summary of the work and payments up to date, also a statement of the claim of the Government against the Union Paving Company for damages, and also a statement of the various charges or deductions that the Government has made against the Union Paving Company. We offer this as the defendants' exhibit next in order.

(The document was received in evidence and marked "Defendants' Exhibit AA.")

Mr. Wrigley: Q. Now, Mr. Dowling, after Union Paving Company received that statement and estimate, did the Union Paving Company accept that as being correct? A. They did not.

Q. And they took an appeal?

A. Yes. [158]

Q. And that appeal is still pending?

A. Still pending.

Q. I show you this writing (handing a document to the witness). A. Yes, sir.

Q. Can you tell us what that is briefly?

A. From our appeal, they have split it to answer it in two separate statements, and they have just only, about sixty days ago, answered the last appeal, and we asked them for an extension of time, which they granted us, to answer their reply, I guess you would call it.

Mr. Wrigley: Without reading this entire letter in evidence, it is dated February 20, 1943, addressed to Mr. Dowling, Union Paving Company, and refers



(Testimony of J. A. Dowling.)

to his appeal, and recites, "An appeal is now under consideration and a decision should be rendered within a few days." We offer this letter in evidence as Defendants' Exhibit next in order, and Mr. Dowling has stated that they have not filed their closing statement in that matter yet.

(The document referred to was received in evidence and marked "Defendants' Exhibit BB.")

Mr. Wrigley: Q. Now, Mr. Dowling, referring back to the work on the Pit River job, did you at any time during the progress of the work request any representative of Union Paving Company to construct or install the interior false framework?

Mr. Moore: May I have that question read?

(Question read.)

A. Not above——

Mr. Moore: Just a minute. I think the question is leading, and I do not understand it, frankly,—request any representative of the Union Paving Company?

Mr. Wrigley: That is in error, if I said Union Paving Company; I meant any representative of Soule Steel Company. [159] That is an error on my part. I would ask the reporter to make that read "any representative of Soule Steel Company." The question may be answered "Yes" or "No."

A. Yes.

Q. To whom did you make that request?

(Testimony of J. A. Dowling.)

A. Mr. Stevens.

Q. Was that oral, or in writing?

A. It was oral.

Q. When?

A. It was oral to begin with, and afterwards it was in writing.

Q. When was that done the first time?

A. The first time I spoke to them about it was in July.

Q. Of what year?                   A. 1941.

Q. Where?                   A. At the jobsite.

Q. Who was present?

A. Mr. Morrisett, I think, and after that I spoke to them in September. Finally in October we served written notice on them to construct the interior bracing.

Q. Going back to the request of July, give us the substance of what you said, and what his reply was.

A. Well, I said to Mr. Stevens, "Don't you think it is about time now that we ought to get together and agree on how to apportion our respective costs for the interior framework?"

And he said he would refer it to San Francisco.

Mr. Wrigley: Going back, I would ask the reporter to read back. My attention has just been called to the fact that Mr. Dowling said that first conversation was in the year 1941.

The Witness: Oh, no, 1940—1940, it was.

Q. Was it 1940, or 1941?

A. No, no, it was 1940.

(Testimony of J. A. Dowling.)

Q. 1940?      A. 1940.

Q. Following that conversation in July of 1940, and prior to the next conversation in September of 1940, did Soule Steel Company install any interior falsework or framework to support the [160] steel?

A. They did not.

Q. Now, coming to the second conversation, which you fix in September, first, where was that conversation held?

A. That was also on the jobsite.

Q. Who were present, as you remember?

A. I don't know, unless it must have been Mr. Morrisett. I used to travel around the job with him.

Q. And Mr. Stevens?

A. And Mr. Stevens and myself, yes.

Q. Give us the substance of that conversation, what you said and what Mr. Stevens said in reply.

A. I asked him if he made up his mind or determined how we should split the charges, and he said he had not. And then I said that we would be compelled under the circumstances to withhold payments beyond that time until some definite understanding had been made, those payments to cover the approximate cost of his share of the work.

Q. Did you at that time request them to do that work?      A. Oh, yes.

Q. Was that request made of Mr. Stevens at that time?      A. I beg your pardon?

Q. Was that request made of Mr. Stevens at that time?

(Testimony of J. A. Dowling.)

A. Oh, yes, the conversations were all had with Mr. Stevens.

Q. Going back to the first conversation, was anything said in that conversation by you or by Mr. Stevens with reference to prorating the cost of that work on any basis?

A. That is what I spoke to him about.

Q. We are talking about the July conversation now.

A. His answer to that was he would have to refer it to San Francisco.

Q. At any stage was there any agreement between Union Paving, on the one hand, and Soule Steel Company, on the other hand, as to how the costs should be divided or apportioned? [161]

Mr. Moore: I think that calls for the conclusion of the witness, your Honor.

Mr. Wrigley: Would the reporter read it?

(Question read.)

Mr. Wrigley: That calls for a statement of fact, whether they did or did not reach an agreement.

The Court: You are entitled to the conversation had, anything said or done with relation to it.

Mr. Wrigley: Q. At any stage of the work was anything said by Union Paving Company and agreed to, accepted by Soule Steel Company or said by Soule Steel Company and agreed to by Union Paving Company as to the basis on which the costs should be apportioned?

Mr. Moore: I think that is subject to exactly the same objection, your Honor. Identify the time, place, who was present, and what was said.

(Testimony of J. A. Dowling.)

The Court: Objection sustained.

Mr. Wrigley: The question really calls for a "Yes" or "No" answer.

The Court: Develop the facts, whatever they are.

Mr. Wrigley: That is what I am trying to do and I am apparently not asking the proper question.

Q. Talking again of the prorated costs, were there any conversations as to how they should be prorated? A. After the signing of the contract?

Q. After the signing of the contract, up to any time after that. A. No, no, not with me.

Q. Other than the conversation that you referred to in September, 1940, in which you stated to Mr. Soule that they should pay a prorata of that cost, you referred to later requests [162] to prorate it?

Mr. Moore: I didn't understand that. Pardon me. May I have that question read?

(Question read.)

Mr. Moore: I do not understand the question, frankly.

Mr. Wrigley: In his previous testimony he said, just a minute ago, that after September there were written requests to prorate. I want to develop what those written requests were.

Mr. Moore: I have no objection to that, if you produce them.

The Witness: Yes, that happened in November.

Mr. Wrigley: Q. Of what year?

The Court: Q. What happened in November?

A. We demanded of Soule Steel Company that



(Testimony of J. A. Dowling.)

they proceed to do the bracing for their steel bars—that was on or about the 24th, I think—and at that time he agreed to do it.

Mr. Moore: Q. Just a minute. Are you discussing conversations, or letters, or what, may I ask?

A. Conversations preliminary to letters.

Q. I still don't understand. Is that a conversation with Mr. Soule?

A. Mr. Stevens.

Q. In November?

A. In October.

Mr. Wrigley: The actual writings I will produce later, or offer them for introduction when I call Mr. Soule as my own witness under Rule 43. No further questions.

#### Cross-Examination

Mr. Moore: Q. Mr. Dowling, you say you had a conversation with Mr. Stevens in July, is that correct?

A. Yes, sir.

Q. Up to that time, starting in in March of 1940, monthly progress billings had been made by the Soule Steel Company to the Union Paving Company for the steel that had been installed, is that [163] correct?

A. That is correct, sir.

Q. And those started in in March, is that correct?

A. That is correct.

Q. And were rendered monthly thereafter?

A. They were.

Q. And as those bills were rendered, did you ever object to the bills to the Soule Steel Company?

A. Yes.

Q. In writing or verbally?



(Testimony of J. A. Dowling.)

A. I don't know whether that was verbal—I think it was verbal.

Q. With whom?

A. We notified Mr. Stevens that we would not pay any more money until some adjustment was made.

Q. That was in July?

A. No, that was the first conversation I had, asking him if we could get together and try to arrange some formula or something to charge each other with their respective portion of the work.

Q. That was in July, was it not?

A. That was in July. And then after that, at the second meeting, I told him at that time we would not pay any more money until something was done about it.

Q. But you had received these bills monthly and had made no objections to them until sometime in July, is that correct?

A. That is correct. There were only three payments due at that time, or three payments that were made, I know.

Q. You did not make any objection to Mr. Soule, is that correct?

A. Up to that time?

Q. Yes.

A. To July?

Q. Yes.

A. No, I had not.

Q. I am referring now to Mr. Soule and not Mr. Stevens. Had you made any objections to Mr. Soule?

A. No, most of our objections were to Mr. Stevens on the job.

(Testimony of J. A. Dowling.)

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A. No, most of our objections were to Mr. Stevens on the job.

(Testimony of J. A. Dowling.)

Q. Did you make any objection to Mr. Soule, or to the home [164] office of the Soule Steel Company until sometime late in October?

A. That is correct.

Q. That is the first time you ever made any objection?

A. Served notice on Mr. Stevens and also on the Soule Steel Company.

Q. You are charging now the Soule Steel Company 100 per cent of the cost of erecting this framework, is that correct?

A. A portion of the framework.

Q. Well, those interior frameworks?

A. A portion of the job. They were not assessed or any claim filed for Abutment 2, Abutments 3 and 4, or Piers 8, 9 and 10.

Q. When did you start work on Abutment 1?

A. Did we start working? We started early in the year.

Q. Did you make any demand on the Soule Steel Company at that time that they install any of that falsework and abutment work?

A. No, I assumed that was part of their contract.

Q. Will you please answer the question? Did you make any demand on the Soule Steel Company?

A. Did I? No, sir.

Q. At the time the job started, that they put in any of this falsework? A. I did not, sir.

Q. The same is true, you made no demand on them until the job had run for eight or nine months, is that correct?

(Testimony of J. A. Dowling.)

A. Eight or nine months—September to March? That is about three months, isn't it?

Q. From March to October—that was the first time you had ever communicated, as I understand, with the Soule home office?

A. That is correct, I guess, yes.

Q. During all that time you had made no demand on them of any kind, character or description other than the ones you referred to of Mr. Stevens?

A. Mr. Stevens, yes—well, he was a [165] partner.

Q. You had paid in July \$5000 on account, had you not?      A. Yes.

Q. And in August \$12,486.25?

A. Something like that.

Q. And in September, on the 21st, you paid \$9126.04, did you not?      A. Yes, sir.

Q. That practically paid your contract in full?

A. Up to that time.

Q. On the monthly billings that had been rendered to that time?      A. Yes.

Q. You refused to pay any more money at that time, did you not, and did not pay the Soule Steel Company any additional money until July 18, 1941, is that correct?

A. December, 1940 we paid them \$20,000, and then paid them another one, I believe, in January, 1941.

Q. At the time you entered into this contract, did you understand at that time the Soule Steel Company were to install all the falsework?



(Testimony of J. A. Dowling.)

back over a written contract, which is prevented by Section 1625 of our Code. The parties agreed to a writing, in which the obligations of each party were stated. An attempt to reopen that in order to vary the contract I say is objectionable.

Mr. Moore: We are not attempting to vary it, if it please your Honor, because as I have listened to the testimony and have read the contract, there isn't the lightest word in that contract that requires the Soule Steel Company to install any of this interior framework. In light of the claims being made, we take it that the contract was sufficiently indefinite to enable us to produce the understanding of the parties at the time the contract was made. In other words, there are several criterions of interpretation. One of them is what the parties did under the contract, to which Mr. Dowling has just testified. I believe it was Lord Suttan who said, "Tell me what a man did under a deed and I will tell you what it means." In other words, we have one criterion now of interpretation and the other one is the negotiations which led up to the making of the contract, and I think it is perfectly relevant and proper under the circumstances, in light of the charges that are made here, to go into the making of that contract.

Mr. Wrigley: In the first place, may it please your Honor, the master contract, if we might call such the contract between Union Paving Company and the United States Government, said that the contractor was to furnish whatever was necessary



(Testimony of J. A. Dowling.)

to erect that steel. That provision was expressly assumed by this written contract. Not only did they assume 23, 34, and 45, [168] but they expressly agreed to 66, which says that they will do that, and on top of that, as if that were not clear, the contract goes on to provide that the contractor, which is the Union Paving Company, "at its own cost, agrees to provide an accessible roadway from Highway 99 to the base of all piers and abutments, construct a wooden trestle over and above the base of the piers, and construct wooden cores, as shown in the plans, which may be used by the subcontractor as a supplementary support for reinforcing bars."

In other words, it says expressly what the contractor is to do, and they say they are going to do everything else. That is the writing, and we think that writing is clear and explicit on its face, and they have no right legally, we feel, to go back and try and show that they agreed to something orally contrary to this writing. That is our objection.

Mr. Moore: The contract provides, your Honor, among other things, that time is of the essence of this agreement, and the subcontractor agreed that it would proceed with the placing of reinforcement bars in sections of the piers and abutments made ready for such placement immediately after being notified by the contractor of the readiness of each section, and prosecute the same diligently to completion, unless prevented by strikes, lockouts, or other contingencies beyond its control. In this connection, your Honor, we propose to prove that nego-

(Testimony of J. A. Dowling.)

tiations started about October 4th, which has been testified to, subject to a motion to strike out; that on December 11th Mr. Soule dictated a proposed bid; that on December 29th there was a conference had at the Soule Steel Works, in which a large drawing of Pier 3 was presented, and in which Mr. Soule outlined in there, under Mr. Cochrane's and Mr. Dowling's sug- [169] gestion, this framework that was to go in to hold it up, and at that time Mr. Dowling and Mr. Cochrane said, "Now, we will provide—" or said in substance, "Now, we will provide this framework. You boys sharpen your pencils and see where we get on prices. You will be entitled to use that framework in your placement of the reinforcing steel." After lunch they had a further session, and in that session they horsetraded, if you want to term it that, the price, the final price being agreed on was \$22.50 a ton for placing the steel. They reduced that amount, your Honor, to approximately half of the contract price—all done under the administration of the Union Paving Company. This letter or bid of Mr. Soule's dated December 11, 1939—we have taken Mr. Dowling's deposition and he has a copy of this in his files; Mr. Soule has one in his files—and each provision in this was taken up, we propose to prove, at this meeting and discussed; and in there there is one provision——

The Court: Pardon me. What was the date of the meeting?

Mr. Moore: December 9, 1939. The contract was

(Testimony of J. A. Dowling.)

signed January 6, 1940, one week later, and in this meeting it was provided, No. 8, "You are to furnish wood supporting framework"—this is a letter from the Soule Steel Company to the Union Paving Company. Mr. Dowling has an exact copy of this in his deposition. We propose to prove that Mr. Dowling took this with him and drew up this agreement. In other words, he prepared the agreement, not Mr. Soule. We maintain, your Honor, that this provision, here, was understood by Mr. Soule at the time to the effect that the subcontractor agrees to proceed with the placing of the reinforcement bars in sections of the piers and abutments made ready for such placement immediately after [170] being notified by the contractor of the readiness of each section. It was understood at that time by Mr. Soule that that provision referred to the building of this interior framework. In other words, we say, your Honor, that the negotiations that led up to this, the circumstances that surrounded the making of this contract were such that the contract, itself, required interpretation, and that the letter of December 11th, which was the memorandum of the parties as to what they agreed to, is properly admissible in evidence. In other words, the contract, itself—there were no changes made after this conference of December 29th—there was merely a draft drawn up—but there were no further conferences. The whole thing was closed on that day except the formal signing of the contract. We take the position that the evidence of the negotiations of the parties, the cir-

(Testimony of J. A. Dowling.)

circumstances surrounding the making of the contract are all admissible so that this Court may be placed in the shoes of the contracting parties and interpret this contract as it was intended by them to be interpreted.

Mr. Wrigley: Our position is simply this: You could call it horse trading or, in contract parlance, offers which were absolutely rejected, and when those offers were rejected and the parties signed a contract in writing, that contract expressly supersedes all the prior negotiations. Now, we think that Section 1625 of the California Civil Code expressly covers this. The execution of a contract in writing, whether the law requires it to be written, or not, supersedes all the negotiations or stipulations concerning this matter which preceded or accompanied the execution of the instrument. Now, here they make an offer to do certain things for certain money. That is rejected, and they come back and make an entirely different contract [171] for something entirely different, at an entirely different price, and we say that the prior negotiations have no legal relevancy at all. That is the basis of our objection.

Mr. Moore: There is nothing in this contract, your Honor, that requires them to put up this framework. I, frankly, can't see it. I think the contract is clearly indefinite, and it is proper that the circumstances leading up to the execution of the contract be admitted in evidence.

Mr. Wrigley: Again we say, your Honor, the contract is express, definite, and clear.

(Testimony of J. A. Dowling.)

The Court: In relation to this framework construction?

Mr. Wrigley: Yes, your Honor.

The Court: Read it.

Mr. Wrigley: In the first place, I am reading now from the master contract, which they assumed, and I am only reading the parts which I think are the pertinent parts, reading first from Section 23:

“The cost of handling and installing minor miscellaneous items of timber, metal and other work, for which specific prices are not provided in the schedule shall be included in the prices bid for the work to which they are appurtenant.”

Then we come to Section 24 of the master contract:

“The contractor will be required to furnish all form materials, including oil for oiling forms; all wire, wire ties; or other appliances used for holding forms and for securing reinforcement bars; metal or other temporary supports, if used, for reinforcement bars and other metal work; welding rods for welding reinforcement bars; all backfill material; all gravel and broken rock or boulders [172] for dry rock paving; gravel or broken rock for drain pockets; all water used for mixing, cleaning, curing, and cooling concrete and mortar and for moistening backfill materials to be compacted; and also all other materials not a part of the completed construction work required for the completion of the contract. The contractor will be required to haul all of these materials, as well as all of the materials delivered to the contractor by the Government. The cost of



(Testimony of J. A. Dowling.)

hauling all of the materials described above and of furnishing all of the materials required to be furnished by the contractor shall be included in the unit prices bid in the schedule for the work for which the materials and hauling are required.”

Then coming to Section 45 of the so-called master contract,—

“The contractor shall provide all clamps, tie rods, cables, blocking, anchors and other accessories that may be required for holding the reinforcement bars in position while the joints are being welded and shall furnish all welding electrodes and hacking up strips required for welding the reinforcement bars.”

Further on in Section 45,—

“The ends of the bars shall be matched accurately and shall be retained in the position shown on the drawings during the welding operations.”

Now, coming to 66,—

“Payment for placing reinforcement bars will be made at the unit price per pound bid therefor bid in the schedule, which unit price shall include the cost of furnishing and attaching wire ties and metal supports if used, of unloading, hauling, sorting, storing, cutting, [173] bending, cleaning, placing, and securing and maintaining in position all reinforcement bars, as shown on the drawings or as directed by the contracting officer.”

Now, that is what they assumed and agreed to do, with the one limitation in the subcontract; in other words, they agreed to do everything that Mr.



(Testimony of J. A. Dowling.)

Dowling or his company agreed to do, except that Mr. Dowling agreed, after we have the provisions whereby they assume paragraphs 23, 24, 45 and 66.—

“The contractor at its own cost agrees to provide an accessible roadway from Highway 99 to the base of all piers and abutments; construct a wooden trestle over and about the base of all pier excavations and construct wooden cores as shown on the plans which may be used by the contractor as a supplementary support for reinforcement bars.”

The Witness: The subcontractor.

Mr. Wrigley: Q. I beg your pardon?

A. You said “contractor.”

Mr. Wrigley: The contractor. This subcontract defines the contractor as being the Union Paving Company and the subcontractor as being the Soule Steel Company.

Then going on, as if that were not clear, we come to the price:

“The contractor agrees to pay said subcontractor for placing reinforcement bars at the rate of \$22.50 per ton for reinforcement bars actually placed in accordance with the plans and specifications which shall be considered as full compensation for unloading, warehousing, hauling, bending, and placing reinforcement bars and clamps, and doing all work necessary or incidental thereto, and for furnishing all tie wire, clamps and supporting devices.” [174]

In other words, that \$22.50 includes this interior framework or falsework which holds up the steel,

(Testimony of J. A. Dowling.)

and if they do not do it, we say they have not done \$22.50-a-ton's worth of work. We think the contract and the subcontract are clear and explicit as to what each is to do, and you can't go back of it and say we talked about doing something else. The fact is they agreed to do certain things irrespective of what they talked about.

Mr. Moore: In the first place, your Honor, Sections 23, 24, and 25 are expressly limited in the Soule-Union Paving Company contract.

"The subcontractor at its own cost agrees to provide all labor, materials, tools and equipment or other means and promptly unload all reinforcement bars from cars delivered at Redding, California, check and haul the same to the job site and provide suitable warehouse or other means of protection for any material requiring storage or protection, in accordance with the provisions of paragraph 23."

In other words, they do not assume by any manner or means the entire obligations of paragraph 23 of the master contract. They assume certain specific things, that is, the unloading, hauling and warehousing. The same is true of the subcontract paragraph 24:

"The subcontractor at its own cost agrees to provide all labor, wire, wire ties, rods or other materials and appliances used for securing reinforcement bars, metal or other temporary supports, if used, to hold reinforcement bars during the placing of concrete, including backing up strip required for welding, in accordance with the provisions of para-

(Testimony of J. A. Dowling.)

graph 24." [175] Mr. Soule has testified already that he did do those things.

"Paragraph 45. The subcontractor at its own cost agrees to provide all labor, materials and equipment, and cut the end of the bars for welding, and provide all clamps, tie rods, cables, blocking anchors, and other accessories that may be required, including placement of backing up strips, and shall firmly and securely hold the reinforcing bars in position while the joints are being welded in accordance with the provisions of paragraph 45."

Then he does assume all the requirements of paragraph 66 of the master contract. And, as I said before, it provides here, and there has been no explanation made by Mr. Wrigley yet, time is of the essence of this agreement, and the subcontractor agrees that it will proceed with the placing of reinforcement bars in sections of the piers and abutments made ready for such placement immediately after being notified by the contractor of the readiness of each section and prosecute the same diligently to completion.

We have a rather amazing situation here, your Honor, as I see it. Mr. Dowling says that he talked to Mr. Stevens sometime in July or September about splitting or apportioning the cost. Mr. Dowling has to take the unequivocal position, in the light of subsequent events, the very day this contract was drawn he understood that Soule was to put in this interior framework. He could not have figured it out later, six or seven months

(Testimony of J. A. Dowling.)

later; he had to take that unequivocal position. Yet he received bills from Soule and paid them. He made no demand on Soule. He put up this falsework. He made no request of any kind for months. When the job got so far, he got hold of the superintendent and said, "Here, you have got to do this." The [176] construction he has placed on it in and of itself is very clear evidence of the understanding of the parties. There is not a word in this contract in which it definitely says this interior framework, the burden of putting that up, buying the steel rails that went into it, paying for the labor, and so on, should be placed upon Soule. It is admitted, and has to be admitted, that this interior framework or falsework was for use in pouring the concrete. They could not, to use the expression, use sky hooks for pouring that concrete. It was used for two purposes. It was used for pouring the concrete, and yet today the Union Paving Company says to Soule, "You are to donate that to us for our free use, this structure which we say should have put up, so we could have poured our concrete free of charge."

There is nothing like that in the contract, and, as I say, your Honor, the circumstances which led up to the making of this contract, the circumstances under which it was made, and, in fact, in this offer, which Mr. Dowling has a copy of, there is a clear meeting of the mind as to what each was required to do. The contract, itself, is here, and Mr. Wrigley cannot point to any particular provision that

(Testimony of J. A. Dowling.)

says Mr. Soule should put in the \$60,000 of framework that was used in the construction of these piers.

We submit, your Honor, the testimony is admissible, and under decisions, of which we can cite many, but which I think is unnecessary, we believe our position is supported. Mr. Wrigley has cited here the Code provision which has to do with a situation where there is no ambiguity about a contract, but all the decisions hold that if there is the slightest ambiguity or uncertainty, the court should hear the oral evidence of the [177] understanding of the parties and the circumstances.

The Court: Read the question, Mr. Reporter.

Mr. Wrigley: I would like the opportunity to reply to Mr. Moore's statement.

The Court: Proceed.

Mr. Wrigley: In the first place, either Mr. Moore has not yet gotten the picture, or he is intending to not state it clearly. We start with a contract in writing as of a certain date. Now, Soule Steel Company started the placing of steel in March, the latter part of March. Up to July practically no steel, or less than, as I remember it, one-tenth of the steel had been placed. The contract up to that time did not require Soule Steel Company to build any framework. No framework was necessary up to that time. Up to that time we were acting under and in accordance with the provision that all the framework in the base was to be done by the Union Paving Company, that



(Testimony of J. A. Dowling.)

they were to construct the wooden trestle over and above the base, and it was not until July that they got above the base of the these piers, requiring interior framework. Then, for the first time, the question comes up of Soule having to do something. They didn't have to do anything in March because there was nothing for them to do. They didn't have to do anything in April, they didn't have to do anything in May, nor they didn't have to do anything in June. In July, Mr. Moore says, "You did not take it up with Soule Steel Company." Mr. Stevens was on the job and a partner. They took it up with Mr. Stevens and attempted to work out some agreement of prorating those costs. It cannot be said that they did those things voluntarily because they were under compulsion of time. The contract with the Federal Government limited the time. It has to be done, [178] not done after you get through fighting over it, but it has to be done immediately. There is a penalty of \$100 a day on each contract unit and, as shown by that exhibit, the penalties for delay on this job came to \$46,000, as I remember it. Union Paving Company could not wait. The work had to be done. If Soule did not do it they had to do it. They could not argue over it. But they took it up with the man on the job. They took it up with him and he said he would refer it to the San Francisco office. Presumably he did. Anyway, by September they had got no action yet. They took it up with him again and with the same result. So, finally, in desperation,



(Testimony of J. A. Dowling.)

knowing they couldn't deal with Mr. Stevens up there any more and get results, they put in writing and sent it to the contracting party, Soule Steel Company, sent it to the home office, as well as to Mr. Stevens on the job.

We submit that that contract is clear and definite as to just what Union Paving Company was to do. In other words, they were to do the constructing of the wooden trestle over and about the base of all pier excavations, and that was the work that was going on substantially up to July, but in July for the first time there comes up the question of erecting interior falsework or framework. We submit that we cannot go back to prior negotiations.

Mr. Moore: I do not like to criticize, but, as a matter of fact, your Honor, Abutment 1 was completed May 4, 1940, and the U. P. back charge there was \$136.14. In other words, this entire erection of Abutment 1 was completed and no claim made against it. Pier 1 was completed June 30, 1941, and they have a U. P. back charge there of \$1000. Pier 2 was completed September 14, 1940, before this was ever taken up with the home [179] office. Mr. Wrigley is in error, because the work was completed and no charge was made for these abutments when they were finished. It was long after—Abutment 1 had been finished four or five months before this question came up.

The Court: Read the question Mr. Reporter.

(The reporter, reading:

(Testimony of J. A. Dowling.)

“Q. As a matter of fact, on December 29, 1939, did you not have a conference at the office of the Soule Steel Company with Mr. Cochrane, who was then your superintendent, Mr. Stevens, and Mr. Soule?”)

The Court: The objection may be overruled. You may answer.

A. I don't recall the meeting. Some of them had a meeting there. I don't recall it.

Mr. Moore: Q. Mr. Dowling, don't you remember going up to the drafting room where Mr. Soule had a drawing of the interior of Piers 3 and 4?

A. I testified to that in the deposition.

Q. Isn't this the document (indicating)?

A. That is not the document.

Q. That is not the document?

A. It was on manila paper.

Q. There was a drawing there, an enlargement of a Government drawing of Piers 3 and 4?

A. I testified in the deposition it was about 2-1/2 feet wide by 10 feet long.

Q. And at that time didn't Mr. Cochrane and yourself tell Mr. Soule how you proposed to construct the interior of these piers?

A. We certainly did not.

Q. And did not Mr. Soule take a T square and a rule and trace in on this drawing the type of construction that you proposed to put there?

A. No, sir. May I finish that question?

Q. Sure.

A. There was a preliminary drawing drawn up

(Testimony of J. A. Dowling.)

first on a small piece of paper, and then I think we went out to lunch, [180] if I remember correctly, went down to the Brannan street place, Manning's, and when we came back I think it was drawn up by a man in Mr. Soule's employ—Mr. Harry Gorham, I think his name is.

Q. That is your recollection now? A. Yes.

Q. Where was that done, up in the drafting room? A. Up in the drafting room, yes.

Q. Before lunch, was it not?

A. It was worked up before lunch, sketched.

Q. Who laid out the type of construction that was going in there, yourself and Mr. Cochrane?

A. Everyone there. Everyone standing around there had some suggestions to make.

Q. Wasn't there some conversation had at that time? You said, "Now, you can see what type of construction we are going to put up. You can place your bars against that. You had better get your pencil out and figure it"?

A. No, sir, that was never said.

Q. As a matter of fact, after lunch didn't you and Mr. Cochrane walk out, and before you went you told Mr. Soule and Mr. Stevens that they had better get a price that would be acceptable to you, and you came back in the course of about an hour and sat down in their office downstairs and had a conversation with regard to the price that was going to be charged?

A. And I accepted that price?

Q. Yes. A. No, sir.

(Testimony of J. A. Dowling.)

Q. As a matter of fact, weren't you holding out for \$22.25, and Mr. Soule wanted \$22.75, and Mr. Cochrane and Mr. Stevens both said, "Why don't you split the difference?"

A. If you will take that letter of Mr. Soule's that you are talking about, with the interlineations in there, you will find he wanted \$24.80. [181] When he put it in there with pencil, he scratched out the Engineer, \$300 a month for sixteen months with his expenses, his automobile to get the job, 16 miles from Redding, and he had about 75 to 80 cents a ton right there; and the constructing of the trestles and costs for his supplemental work would also reduce that. Mr. Soule had no exclusive grip or hold on that job.

Q. I will hand you a letter dated December 11, 1939, produced by your counsel. A. Yes, sir.

Q. That has been in your possession since sometime in December, has it not?

A. December? Yes, I guess it was December 11th, I think it was. Let me just show you here——

Q. Just pardon me. Let me identify the letter and I will. A. Excuse me.

Q. Wasn't this letter before you and Mr. Soule at the conference that you had in his office after you came down from the drafting room?

A. Wasn't it before?

Q. No, wasn't this draft that you produced in your and Mr. Soule's possession after you left the drawing room?

Mr. Wrigley: Just a second, Mr. Dowling. So

(Testimony of J. A. Dowling.)

the record will be clear, will it be stipulated, in the interest of time, that I object to this entire line of examination, that it all goes in subject to my objection and my motion to strike?

Mr. Moore: It will be stipulated.

Mr. Wrigley: I do not want to object to every question on the same grounds.

A. I think it was about November 17th or 18th, somewheres along in there, that is, when we were in that drafting room, and this letter comes subsequent to that.

Q. You are positive of that?

A. That is the typewritten portion of it, and then when Mr. Soule came in the office later on, after [182] closing the contract, he had the pencil portion inscribed in there.

Q. Wasn't this pencil portion placed on there in Mr. Soule's handwriting?

A. Yes, sir, that is correct.

Q. And isn't it a fact that that writing was placed there in the presence of yourself, Mr. Stevens, and Mr. Cochrane?

A. No, sir, that was put in in our office.

Q. In your office?

A. Yes, when he came down to close the contract. May I say something further about this, if it isn't out of order?

Mr. Moore: I am going to introduce it.

The Witness: All right.

Mr. Moore: I will introduce this in evidence, your Honor.

Mr. Wrigley: Same objection.



(Testimony of J. A. Dowling.)

Q. As a matter of fact, weren't you holding out for \$22.25, and Mr. Soule wanted \$22.75, and Mr. Cochrane and Mr. Stevens both said, "Why don't you split the difference?"

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Mr. Moore: I am going to introduce it.

The Witness: All right.

Mr. Moore: I will introduce this in evidence, your Honor.

Mr. Wrigley: Same objection.

(Testimony of J. A. Dowling.)

The Court: Let it be admitted and marked.

(The document was thereupon received in evidence and marked "Plaintiff's Exhibit 21," and was read by Mr. Moore.)

PLAINTIFF'S EXHIBIT NO. 21

Los Angeles

Telephone

Portland

VAlencia 4141

Houston

[Emblem] (SS Co. Iron and Steel Products)

Soule Steel Company

Iron and Steel Products

1750 Army Street, San Francisco

December 11, 1939

Gentlemen:

Re: Abutments and Piers, Pit River Bridge  
Relocation of Southern Pacific Railway  
and U. S. Highway 99

In regard to the labor of installing the reinforcing steel bars, Bid item No. 11, as specified for the construction of the above project in accordance with plans and specifications prepared by the United States Department of the Interior, Bureau of Reclamation, we are pleased to quote you as follows:

1. We are to receive the reinforcing steel bars f. o. b. cars Redding, California.
2. The 2" square bars are to be bent at supplier's mill, all other bars are to be furnished in straight lengths.
3. We are to be responsible for the unloading,

(Testimony of J. A. Dowling.)

checking and handling of said reinforcing steel upon arrival at Redding upon a lot to be provided by you. us, ~~(We estimate the storage lot size should be about 150' x 350' and adjoining a rail track.)~~ [the rental of which shall not exceed \$30.00 per month.\*]

4. We will do the cutting, bending and shaping of 2" bars preparatory to welding, loading on to trucks and transporting to jobsite to conform to your construction schedule.

5. You are to provide an easy and accessible roadway from the main highway to the base of the piers and abutments as required and a leveled portion around the piers, [or a wooden trestle which we may be for our use.\*]

6. We will furnish all labor (including insurance) to do the placing of the reinforcing steel, including tie wire and accessories under above bid item No. 11 (but not including welding).

[Fig. 7 in circle].

[are to furnish wood supporting framework\*]

7. You ~~will pour concrete~~ "pyramids" ^ in the base of piers # 1, 2, 3, 4, 5, 6 and 7 (and/or will furnish and erect wood core forms and/or steel supports, against which the 2" bars can be supported.)

8. We have provided in this proposal for a job engineer 16 months ~~at \$300.00 per month, which cost will be borne equally.~~

Marginal notation [omit].

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[\*Printer's Note: Words in light brackets were inserted in copy in pencil.]

(Testimony of J. A. Dowling.)

9. Sufficient lights will be furnished by you; also power outlets will be available for our use.

Price: As specified for the above items, the unit price of \$24.80 per ton.

If a bond is required, the same will be for your account.

Payments are to be made on or about the 10th of the following month for 85% of the value of the work performed during the preceding calendar month, and the remaining 15% to be paid 30 days after completion of our portion of the work.

Note: We are not to be held responsible for failure by delay or default arising from strikes, lockouts or other contingencies beyond our control.

If the above is in accordance with your understanding, please accept in the lower left hand corner, and it will constitute an agreement between us.

Sincerely yours,

SOULE STEEL COMPANY

By EDW. L. SOULE

Accepted:

UNION PAVING COMPANY

By

[Figure seven in circle.]

[You are to pour concrete "sills" as required, in the base of the piers to support the reinforcing steel mats in the bottom of the piers. On the steel reinforcing mats, the steel shoes, which support the 2" vertical bars, are to be placed.\*]

ELS:DL

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[\*Printer's Note: Words in light brackets were inserted in copy in pencil.]

(Testimony of J. A. Dowling.)

Quotations subject to change without notice. All sales, contracts or agreements subject to strikes, accidents or causes beyond the company's control.

[Endorsed]: Filed 4/15/43.

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Mr. Moore: Q. And that handwriting is Mr. Soule's? You recognize the handwriting?

A. Yes.

Q. Would you say that was put on in your office?

A. Yes.

Q. Prior to the making of the contract?

A. Prior to the making of the contract.

Q. When Mr. Soule wrote that in in pencil——

A. I believe he did, yes.

Q. Did he have another copy of the same document that he wrote in in pencil, too, in your presence?

A. I don't know.

Q. Didn't you see him write both of them in your presence?

A. I can't say that he did. He might have.

Q. You used that document that you have there in the preparation of the contract, did you not?

A. No, the contract was drawn [183] before we got the document.

Q. That was drawn afterwards, is that correct?

A. It was drawn afterwards.

Q. This letter of December 11th?

A. Yes, before the preliminary contract was drawn, which was submitted to you in your office, also.

(Testimony of J. A. Dowling.)

Q. Was this drawn before or afterwards?

A. Which?

Q. This letter.

A. This letter was drawn before.

The Court: For the purpose of the record, identify it.

Mr. Moore: Exhibit 21.

Q. What I am trying to get at is when was Mr. Soule's handwriting placed on that?

A. To the best of my knowledge it was placed on at our office.

Q. Before the contract was executed and signed, is that correct? A. Yes.

Q. And that would evidence your understanding at that time and your agreement, did it not?

A. No, he is quoting this \$24.80 here.

Q. I mean aside from the price? A. No, he agrees—he requires here to have the bars bent at the mill in one section and in the next section he says he will do it himself.

Q. Didn't you take up with him at the time and discuss each one of those paragraphs?

A. We discussed the contract, yes.

Q. And you reached a meeting of minds?

A. No, he was seeking a contract, and I was seeking the best contract I could get from him, or from others. He had no exclusive right to this contract.

Q. What memorandum, if any, did you use in drawing the contract? You actually prepared this contract which is in dispute, did you not?



(Testimony of J. A. Dowling.)

A. Quite true. [184]

Q. As I understand, you wrote it out in long-hand?

A. That is correct.

Q. And turned it over to your stenographer?

A. That is correct.

Q. What data did you use in preparing that contract?

A. I took the Government specifications and followed each paragraph of the specifications, with exceptions.

Q. Didn't you have that letter before you at that time?

A. Which letter?

Q. The one you have in your hand.

A. No, sir.

Mr. Moore: Might we have a recess for a few moments, your Honor?

The Court: Yes.

Mr. Moore: I think I am pretty near through with this witness.

(Recess.)

### Redirect Examination

Mr. Wrigley: Q. Mr. Dowling, showing you this writing on the letterhead of the Soule Steel Company, consisting of two pages, bearing date of December 11, 1939, which has been marked "Plaintiff's Exhibit 21," which in the first instance was on the typewriter with penciled inter-lineations on it, I ask you did that writing in any respect constitute a basis for drafting the contract which was later signed on January 6, 1940?

A. It did not.

(Testimony of J. A. Dowling.)

Q. Was the contract of January 6, 1940 developed by you before or after you received this writing?

A. It was worked up before we received this writing.

Q. Now, at or about that time did you receive written offers from other firms for this work?

A. We did.

Q. Oral, or in writing? A. In writing.

[185]

Q. Have you any of those officers with you?

A. Yes, sir.

Q. Showing you this on the letterhead of Sherwood S. Cross, Engineer-Contractor, 2422 Washington Avenue, Santa Monica, California, dated October 12, 1939, addressed to Union Paving Company, I asked you to tell us what that is.

A. This is a proposal to set the steel on the job, the Pit River job, at \$24 a ton, and a price there for the welding in addition to that.

Mr. Wrigley: For the Court's information, I would like to read this.

(The document referred to was thereupon read by Mr. Wrigley.)

Mr. Wrigley: We offer that as Defendants' Exhibit next in order.

(The document was thereupon received in evidence and marked "Defendants' Exhibit CC.")

Mr. Wrigley: Q. Just for the purpose of the

(Testimony of J. A. Dowling.)

record, so as to clear it up at this time. that letter was received on or about its date, October 12th?

A. Yes, sir, shortly after the bids were submitted.

Q. Have you other firms that were making offers, written or oral, for this work at that time?

A. There were some oral offers.

Q. Were there any other written offers?

A. No.

Q. Now, Mr. Moore asked you about the receipted bills for March, April, May and June, presumably, and asked you if prior to July you made any countercharge or complaint against them for installing falsework. What was the status of the work at that time? In other words, how far had the work progressed as to Abutments 1 and 2?

A. In July——

Q. July of 1940.

A. There were only two—Abutment 1 was completed. Abutment 2—there was no charge there against Mr. [186] Soule—a portion of Pier 1 in July, and then in August——

Q. Pardon me for interrupting.

A. A small portion of the steel had been set at that time, in tonnage.

Q. As to Pier 1, which was the second unit under the contract. what was the status of that work as of the time of your first conversation with Mr. Stevens?

A. That was completed at the very end of

(Testimony of J. A. Dowling.)

June—I think the 29th or 30th—somewhere along in there.

Q. Now, Pier No. 2, what was the status of that work at the time of your first conversation with Mr. Stevens?

A. Oh, very, very little. There was nothing above the trestle.

Q. What do you mean by “above the trestle”?

A. Well, above that—over the base of the pier.

Q. Now, will you come to the next unit, Abutments 3 and 4, and Piers 8, 9, and 10; what was the status of that work?

A. There was no charge against Soule for that.

Q. The next unit under the contract, Pier 3, what was the status of that work at the time of your first conversation with Stevens?

A. No work over the base of the pier.

Q. The next unit they give, Piers 6 and 7, what was the status of that?

A. There was nothing at all.

Q. The next unit, Pier 5, what was the status of Pier 5?      A. Nothing on Pier 5.

Q. And Pier 4, which was the last unit.

A. No, there was nothing there. That was one of the largest piers, too.

Mr. Wrigley: That is all.

Mr. Moore: No further questions.

Mr. Wrigley: I would like to call Mr. Soule under Rule 43 at this time. [187]